

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC., Case No. 08-13555-scc

7 Debtor.

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10 United States Bankruptcy Court

11 One Bowling Green

12 New York, New York 10004-1408

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14 December 13, 2017

15 11:35 AM

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23 B E F O R E:

24 HON. SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

1 IN RE: RMBS Claims Estimation Trial

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25 Transcribed by: Dawn South and Sherri L. Breach

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1 P R O C E E D I N G S

2 (A chorus of good morning)

3 THE COURT: Good morning. I apologize if it's
4 cold in here today.

5 MR. SHUSTER: Prefer it.

6 THE COURT: You're good? Ready when you are.
7 Mr. Aronoff, please come up.

8 (Pause)

9 MR. COSENZA: Your Honor?

10 THE COURT: Yes, Mr. Cosenza.

11 MR. COSENZA: Before the witness restarts, you
12 know, we had an objection to the last question.

13 THE COURT: Yes.

14 MR. COSENZA: Mr. Shuster informed me during break
15 that he's going to ask a new question, so --

16 THE COURT: Okay.

17 MR. COSENZA: -- I don't know the substance of it,
18 but hopefully we'll -- you know, we'll move on from the
19 objection.

20 THE COURT: Okay.

21 MR. COSENZA: Thank you.

22 MR. SHUSTER: Thank you, Your Honor.

23 THE COURT: Are you ready, Mr. Aronoff?

24 THE WITNESS: I am, thank you.

25 THE COURT: Okay.

1 JAMES H. ARONOFF, WITNESS, PREVIOUSLY SWORN

2 DIRECT EXAMINATION, CONTD.

3 BY MR. SHUSTER:

4 Q Mr. Aronoff, do you opine in your expert reports as to
5 the purpose of the repurchase provision?

6 A I believe I do.

7 Q Let me direct you to your rebuttal report, paragraph
8 148.

9 (Pause)

10 A Paragraph 148?

11 Q Yes, please.

12 A I'm there.

13 Q So in setting forth your opinion concerning the purpose
14 of the repurchase provision were you responding in part to
15 the opinion put forward by the plan administrator's expert,
16 Daniel Castro?

17 A Yes.

18 Q So would you describe the opinion that you provide
19 concerning the purpose of the repurchase provision, please.

20 A Yes, I'm just taking a couple of seconds to read the
21 paragraph, please.

22 (Pause)

23 A Okay. I recall this discussion.

24 Q And take it in, you know, bytes and we'll -- okay?

25 A I'll try and keep it clear and organized.

1 In my experience and based on my understanding, the
2 repurchase provision is really an administrative provision
3 to be operated among the parties in the normal course of
4 business. Almost like the return desk at a department store
5 where if a loan is found to have a defect, subject to the
6 satisfaction of certain conditions precedent, the party who
7 received the reps and warranties who's making the claim,
8 delivers it, shows -- gives notice to the maker of the reps,
9 and then the maker of the reps evaluates the quality of the
10 claim and has one of three options if they find that the
11 claim is valid.

12 And it was supposed to be in the normal circumstances
13 prior to the financial crisis as I said a devise that would
14 enable a sponsor to take non-conforming loans out of a pool,
15 to the extent that they were found to be so, without a whole
16 lot of expense or adversarial discussion.

17 And I found in reading some of Mr. Castro's complicated
18 and elaborate requirements to determine a material adverse
19 effect, in my view and experience, were never contemplated
20 by that provision because it would require in almost every
21 instance an expenditure of resources and time that in almost
22 every case it wouldn't justify putting back a loan with a
23 balance of a couple hundred thousands dollars.

24 Q Very good. So let me -- you mentioned that there were
25 three options for a sponsor presented with a repurchase

1 claim. What are those options?

2 A The three options that are typically found in
3 provisions of this type are first to cure, and that is when
4 presented with a deficiency or defect in the loan that
5 causes a breach of the rep and warranty. To the extent that
6 deficiency or defect is curable the sponsor can do so and in
7 essence take what appears to be a non-conforming loan and
8 turn it into a conforming loan.

9 Secondly within the first two years of a transaction,
10 to the extent the sponsor has what's defined in most of the
11 documents as a qualified substitute loan, they can take the
12 non-conforming loan and replace it with a qualified
13 substitute loan, and in essence put the investors back in
14 the same position they were if the loan had been conforming.

15 And finally to the extent neither of those remedies are
16 available the sponsor is required to deposit the purchase
17 price into the trust in exchange for the non-conforming
18 loan.

19 Q Do you know why the third option was there?

20 A Yes, it's to -- as I eluded to earlier, it's to give
21 the investor in essence a money back guarantee for a loan
22 that isn't as they bargained for. It's a non-conforming
23 loan, investors bought loans that complied with the reps and
24 warranties, and it's a way of providing a payment in lieu of
25 that loan, it puts the investor in the same position as they

1 would have been in if that loan had prepaid in full.

2 Q Should a breaching loan have been in the trust in the
3 first place?

4 A No, and that's the reason this mechanism exists.

5 Q You were asked at your deposition by counsel for the
6 plan administrator whether the new purchase provision
7 provides -- leads to a windfall. Do you recall that?

8 A Not specifically.

9 Q Do you have an opinion as to whether it does?

10 A I don't think if one of those three provisions -- one
11 of those three remedies is exercised by a sponsor in
12 response to a request for repurchase it can ever provide a
13 windfall to investors, it just is the bargain that both
14 sides made.

15 Windfall in my mind requires that the investor be
16 getting something more than they're entitled to, and to
17 receive a repurchase for a defective loan as required by the
18 governing documents in my view would not result in anything
19 more than the parties bargained for.

20 Q Okay. Thank you. Let's talk about material and
21 adverse effect, Mr. Aronoff.

22 I think you testified earlier that you had the occasion
23 to address the AMA standard in the ordinary course of your
24 career.

25 A That's correct.

1 Q How is that standard understood and applied in the
2 industry?

3 A Based on my experience and understanding a material
4 adverse effect in connection with an RMBS security is
5 demonstrated if the deficiency or defect that is the basis
6 for the breach finding increases the risk of loss to an
7 investor.

8 Q Just as a point of clarification. When you use the
9 term MAE, a material and adverse effect, and I used the term
10 AMA, we're talking about the same thing, right?

11 A I understand.

12 Q Yes. Okay. You -- so how does the increase in risk of
13 loss translate into an AMA or MAE?

14 A Okay. The underlying theory of expected losses on any
15 given mortgage pool, even breaking down the most complicated
16 predictive loss models, is really just a function of the
17 likelihood of default, sometimes called the foreclosure
18 frequency with respect to mortgages, times the loss
19 severity. That is how much will a loan lose in the event of
20 a default. And the product --

21 Q Well let me just stop you --

22 A Go ahead.

23 Q -- because I think you've got a chart on this in your
24 book.

25 A Yes.

1 Q So to the extent you want to refer to that --

2 A Yeah. So --

3 Q -- please feel free, you don't have to.

4 A So the kind of foundation theoretical formulation of
5 how investors, rating agencies, bond insurers, lenders think
6 about how to calculate or estimate the expected loss in any
7 given pool on any given loan and on any given pool is to
8 look at the likelihood of default times the loss severity,
9 and that will produce -- that product will produce an
10 expected loss.

11 Q What do you mean by loss severity?

12 A Loss severity is the amount that would be lost in the
13 event of a default.

14 Q So does --

15 A The percentage that would be lost.

16 Q Thank you, sir. Does increase risk bear directly on
17 the value of the loan?

18 A It does.

19 Q Would you explain how, please.

20 A Yes. Because I think of another slide after that, when
21 we talk about expected loss, which is the same as credit
22 risk, that's really the flip side, if you look at this very
23 simple chart, all other things being equal, if you start at
24 zero expected loss, a loan that will -- has absolutely no
25 chance theoretically of defaulting, the value of that loan

1 is at its peak. And as you go down the curve and the
2 likelihood of loss on that loan, that is you will not be
3 repaid the amount that you expect when you pay good value
4 for that loan initially, the value of that loan to an
5 investor will diminish all the way down to there's very
6 little, all other things being equal, that an investor will
7 pay for a loan with a hundred percent likelihood of loss.

8 Q Does it matter --

9 THE COURT: Mr. Shuster, can I interrupt for a
10 moment, please.

11 MR. SHUSTER: Please.

12 THE COURT: I'm looking at TRDX-175. You're not
13 presenting this as a scientific representation of anything,
14 right?

15 THE WITNESS: No, ma'am, this is just a
16 theoretical -- it's a --

17 THE COURT: Okay. I mean --

18 THE WITNESS: -- drawing of the theoretical
19 explanation I'm giving.

20 THE COURT: But I'm asking a more specific
21 question. It's a drawing of the theoretical explanation
22 that qualitatively describes the relationship between value
23 and loss. But I could draw this curve in any number of
24 different ways.

25 In other words I could -- like suppose this were a

1 new car, right, they say that the car depreciates the minute
2 you drive it off the lot, so the value would decline in a
3 different shape, right? This drawing is not a reflection of
4 some mathematical or statistical model of the relationship
5 between value and expected loss, right? A function is --
6 describes an arithmetic relationship, one variable as a
7 function of another. That's not what -- you're just trying
8 to say qualitatively you think there's this relationship.

9 If you -- I'll try it again if you don't
10 understand my question. All right? This is not a plot of
11 any actual data points. This is not derived from any data
12 set, right?

13 THE WITNESS: That's absolutely correct.

14 THE COURT: Okay.

15 THE WITNESS: It's not derived from a data set,
16 it's derived from --

17 THE COURT: In other words I'm going to take my
18 little red pen here and maybe I can simplify it this way.
19 The curve might look like that, right?

20 THE WITNESS: The slope of the curve might be
21 different --

22 THE COURT: Okay.

23 THE WITNESS: -- for any given transaction.

24 THE COURT: Very good.

25 THE WITNESS: The relationship I was trying to

1 demonstrate, and the one thing that confused me a little bit
2 is there's no time element in here. It's at the time the
3 investment decision --

4 THE COURT: Yes.

5 THE WITNESS: -- is made given any expected loss
6 the value, all other things being equal, would be lower.

7 THE COURT: Okay.

8 THE WITNESS: But there's no slope that's
9 supported by data.

10 THE COURT: There's no slope that's supported by
11 data. That's all I wanted to know. Thank you.

12 THE WITNESS: One could construct one, but that's
13 not the purpose of this curve.

14 THE COURT: And then we'd be here for several more
15 months.

16 THE WITNESS: I understand.

17 BY MR. SHUSTER:

18 Q For purposes of the analysis that you just provided,
19 Mr. Aronoff, on the relationship between risk and value,
20 does it matter if a loan is inside or outside of a
21 securitization?

22 A No, the analysis to estimate how a particular loan will
23 perform is still a function of the characteristics of that
24 loan that are correlated to the likelihood of default or the
25 loss severity or both.

1 Q If a loan had an unknown misrepresentation at the
2 closing of the securitization, what, if anything, does that
3 say about the price paid by investors for that loan?

4 A To the extent there was an unknown breach, a material
5 adverse breach then that would imply that the investors
6 overpaid for that loan.

7 Q Does the materiality of a breach in your opinion change
8 over time on a mortgage loan that's been put into a
9 securitization?

10 A No.

11 Q Why not?

12 A Because the loan has actual characteristics that exist
13 with respect to that loan at the time an investor makes the
14 investment decision and pays consideration for that loan.
15 The performance of that loan over time subsequent to that
16 investment decision and the understanding and bargain that's
17 made with respect to that loan is the same. The only thing
18 that might change over time is that once that defect is
19 discovered at that time the investor understands they've not
20 received the benefit of their bargain and potentially
21 overpaid for a defective loan.

22 Q Let me ask you this. Thank you, Mr. Aronoff.

23 If the loan is modified over the course of its life
24 what is the usual consequence to -- securitized loan is
25 modified to provide the borrower some form of relief what is

1 the consequence to investors?

2 A It depends on the type of modification, the specific
3 type of modification. I mean at a minimum by definition it
4 changes the payment terms of the loan that they expected to
5 have one set of payment terms and has another one. It could
6 extend the duration, it could lower the coupon, it could
7 provide relief for some part of the principal balance that
8 the borrower expected. But you know, the most I can say in
9 that broad hypothetical is it changes the payment terms of a
10 loan that were initially expected by the borrower when they
11 paid for this -- the security that's supported by the cash
12 flows of those loans.

13 Q Is it the --

14 MR. COSENZA: Your Honor, just --

15 THE COURT: Yes, Mr. Cosenza?

16 MR. COSENZA: -- for the record, I don't want to
17 interrupt, I believe that that is not -- that's -- the Q and
18 A was a new opinion, that was not in any of his reports.

19 THE COURT: Okay. Let's give Mr. Shuster a
20 moment. Why don't you look at the question and the answer
21 and help us connect it up.

22 MR. SHUSTER: Well I think it's within the scope
23 of Mr. Aronoff's opinion concerning material and adverse
24 effect on the value of the loan.

25 THE COURT: Could you give me the --

1 MR. SHUSTER: Oh, I'm sorry.

2 THE COURT: -- question back again, please.

3 MR. SHUSTER: Oh, of course. I'm sorry.

4 If a loan is modified over the course of its life
5 what is the usual -- if a securitized loan is modified over
6 the course of its life what is the consequence to investors?

7 MR. COSENZA: Yeah, I mean if there's a -- again,
8 if there's a cite to one of his reports. Your Honor, just
9 doing this with the three voluminous reports, I don't recall
10 that opinion in any of his reports. If there is I'll move
11 on. We can -- I just want to put that on the record.

12 MR. SHUSTER: It comes within the scope of
13 Mr. Aronoff's opinion concerning the affect of a breach on
14 value, and in responding to Mr. Castro's opinion that it's
15 necessary to show that a loan defaulted in order to have a
16 -- to have a material adverse effect.

17 THE COURT: Are we talking -- you have to help me
18 on this. Are we talking about a loan that's modified --
19 when you say a securitized loan you mean a loan in one of
20 the pools. Is that what we're talking about?

21 THE WITNESS: I understood the question to pertain
22 to the covered loans in the trust that we're discussing,
23 yes.

24 THE COURT: But in the instance of a modification
25 we're talking about a modification to a particular loan?

1 MR. SHUSTER: We're talking about a modification
2 to a securitized loan in general.

3 THE COURT: Okay. That's where I'm getting
4 confused by the term securitized loan.

5 MR. SHUSTER: I mean a loan that --

6 THE COURT: In a loan that is in a securitization
7 --

8 MR. SHUSTER: Yes.

9 THE COURT: -- pool and it is modified --

10 MR. SHUSTER: Yes.

11 THE COURT: -- at some course during its life.

12 MR. SHUSTER: Yes.

13 THE COURT: And then the question is?

14 MR. SHUSTER: What is the affect on investors of a
15 loan modification?

16 THE COURT: And the answer was?

17 THE WITNESS: It will change the payment terms.

18 THE COURT: Of the loan.

19 THE WITNESS: Of the loan that had been expected
20 by the investor from the payment terms --

21 THE COURT: Okay.

22 THE WITNESS: -- that had been expected by the
23 investor --

24 THE COURT: Okay. So --

25 THE WITNESS: -- when they initially bought the

1 pool.

2 THE COURT: Okay. So my common sense response to
3 this is we could stipulate to that fact. I mean there might
4 be additional questions that actually get us to something
5 that we'd have to look at the expert reports, but on that
6 basic proposition I think that's --

7 MR. COSENZA: Okay, Your Honor, if we go further
8 into this we'll raise --

9 THE COURT: Okay.

10 MR. COSENZA: -- but that's -- I understand.

11 THE COURT: Okay?

12 MR. COSENZA: Thank you.

13 THE COURT: All right. Thank you.

14 BY MR. SHUSTER:

15 Q The only further question I have on this is whether the
16 change in the terms of the loan that you just described has
17 adverse consequences to investors?

18 A It very well may.

19 Q Mr. Aronoff, is it the industry understanding that a
20 breach of a representation --

21 THE COURT: Can I just -- now that you've peaked
22 my interest on this point though.

23 When -- there are all kinds of different loan
24 modifications that can occur, right?

25 THE WITNESS: Yes.

1 THE COURT: Right. So a loan could be modified
2 I'll say voluntarily. The borrower contacts the bank and
3 says I'm hitting a rough patch, can you give me a loan
4 modification? And the bank will say, sure, right?

5 THE WITNESS: Yes.

6 THE COURT: Okay. So in that instance if -- so
7 that occurred, that transaction. Then moving forward in
8 time it is discovered that at the inception of the
9 origination of the loan there was a material breach. I'm
10 making up a hypothetical.

11 THE WITNESS: I understand.

12 THE COURT: Okay? And that that material breach
13 remained undiscovered at the time of the modification.
14 Okay?

15 THE WITNESS: Yes.

16 THE COURT: So does the reduction in the amount of
17 the payment stream that goes to the lender, does that count
18 in your view in the what could be asserted against the
19 sponsor?

20 Borrower and lender agree to a reduction, running
21 in the background is a breach that no one discovers, we're
22 now here in 2017, is it for the account of Lehman in this
23 case, the delta in the reduction? In other words the
24 reduction in the payment stream that the lender voluntarily
25 agreed to give the borrower? Does that question make sense?

1 THE WITNESS: I understand. Hopefully my answer
2 will make sense.

3 THE COURT: Okay.

4 THE WITNESS: Whether or not there was a
5 modification was extraneous and irrelevant to our
6 determination, my determination of whether there was a
7 material adverse effect caused by the breach.

8 Where a diminution of payments that otherwise
9 would have been received by the investor may come into play
10 is simply in the calculation of the purchase price, because
11 when you're calculating what should have the investor
12 received up to this point in time had there not been a
13 modification maybe their repurchase price would have been a
14 little lower because the -- but in any event usually the
15 repurchase price is defined as the original principal
16 balance plus accrued balance.

17 So the only way a modification changes -- may
18 change the repurchase provision is to the extent the payment
19 streams up to that point would change the purchase price to
20 an amount that was different than it would have been absent
21 a modification. But it doesn't impact the determination of
22 whether or not there was a material adverse effect of the
23 breach in question.

24 THE COURT: Okay. Thank you.

25 BY MR. SHUSTER:

1 Q In your experience, Mr. Aronoff, is it the industry
2 understanding that a breach of a representation and warranty
3 must have caused a loss or a default for AMA purposes?

4 A No, for the same reason that a modification would not
5 impact the finding of discovery of a material adverse
6 breach. Whether or not the loan defaulted or was performing
7 would not affect that decision either. And certainly the
8 requirement that a particular breach caused the default is
9 nowhere to be found in the documentation.

10 Q How did the trustees assess an adverse and material
11 effect during the protocol process?

12 A There were four basic types of ways in which broadly,
13 generally a determination of whether or not a material
14 adverse effect existed based on the specific facts of each
15 individual loan and breach finding, and these are the four
16 that in one variation or another based on the specific
17 breach finding were cited for each and every breach finding
18 that was presented under the protocol.

19 The first is that the defect causes a increase in the
20 likelihood of default, and therefore since expected loss,
21 the risk of loss is simply the product of the likelihood of
22 default and loss severity if the likelihood of default goes
23 up, all other things being equal, the expected loss has to
24 go up.

25 Similarly if the deficiency or defect of a breach

1 finding caused an increase in the loss severity same effect.

2 And of course if the identified breach finding
3 increased both sides of that equation then the product --
4 the expected loss has to go up also.

5 The only additional variance was to the extent a breach
6 in any one of the trust was deemed material -- a breach was
7 deemed material that would also be cited as the materiality
8 statement and the reason for a particular breach finding on
9 a particular loan being found to be -- meet the material and
10 adverse standard.

11 Q Did the trustees make an AMA determination on a loan by
12 loan basis?

13 A No, they made it on a breach finding by breach finding
14 basis.

15 Q Which is to say?

16 A Which is to say that on some loans that determination
17 was made with respect to each of the --

18 Q Oh, I'm sorry.

19 A -- multiple breach findings.

20 THE COURT: Can I -- is it possible in your view
21 for any of these pools or trusts for there to be a finding
22 of a material breach that then is found to not have an
23 adverse material effect?

24 THE WITNESS: Yes, there are only a handful, and I
25 think we touched on them yesterday, of representations and

1 warranties where there's a materiality standard in the rep
2 that requires you to say to determine on the rep level is
3 there a breach only if there's a material defect, and then
4 once you identify a breach you do the secondary analysis and
5 say is there MAE. But for most reps without an implicit
6 materiality standard we didn't cite the breach. There might
7 have been a technical violation or a deviation from the rep
8 factually, but in my parlance that wouldn't ever rise to the
9 level of a breach because the effect of that was not
10 material and adverse to the interest of the investors, never
11 met the MAE.

12 THE COURT: Well let me ask it a slightly
13 different way, I'm going to hijack Mr. Shuster's
14 examination, he's doing such a nice job.

15 Let's take a hypothetical missing qualified
16 appraisal. In your architecture of this that would be a
17 material breach, right?

18 THE WITNESS: Yes.

19 THE COURT: Okay. And that would -- that has an
20 adverse material effect in your view, right?

21 THE WITNESS: On the value to investors, yes.

22 THE COURT: Yes. Okay. So just hypothetical what
23 I'm asking is could there ever be an instance in which you
24 find that a qualified appraisal is missing but you do not
25 find an adverse material effect as a result of the existence

1 of that material breach? That's the structure of my
2 question.

3 THE WITNESS: Not in that example, Your Honor.

4 THE COURT: Okay.

5 THE WITNESS: No.

6 THE COURT: Okay. Thank you.

7 MR. SHUSTER: Thank you, Your Honor.

8 BY MR. SHUSTER:

9 Q Mr. Aronoff, you've heard that Mr. Grice and at times
10 the plan administrator has said that every mortgage loan is
11 a snowflake. Do you have a response to that?

12 A Yes, I do, and I -- it is of course irrefutable that in
13 most cases every single loan is different, even loans to the
14 same borrowers are different to some extent. The balance is
15 different, an address might be different, certain underlying
16 statistics about the loan might be different. But I think
17 that is an oversimplification which masks some fairly
18 fundamental basic tenants of securitization.

19 The whole concept of securitization is based on the
20 notion of homogeneity and that there are certain attributes
21 of these loans, which of course are different, can be
22 grouped together sufficiently for an investor to look at a
23 pool of loans and assess the investment risk that is
24 implicit in that pool. And what the reps and warranties do
25 ironically is that they are the primary source of providing

1 the promises to investors that provide the similarities and
2 the homogeneous aspects of those loans.

3 So yeah, they're all different, but they are the same
4 to the extent the reps and warranties circumscribe a type of
5 loan with a type of performance expectation or credit risk
6 that the investor makes a decision to invest in.

7 Q Is it possible to reach breach conclusions across
8 groups of loans using similar types of evidence?

9 A There's a lot in that question.

10 The breach determination in this case was made on a
11 loan by loan basis, but the discussion in all my reports
12 about those breaches tries to group similar types of
13 breaches with similar types of effects on a loan for
14 purposes of discussion.

15 So yes, you can, as I tried to do in my report,
16 illustrate why in every case a misrepresentation of income
17 that may be supported by nine different types of supporting
18 documentation but is characterized and described as a
19 misrepresentation of income, based on certain reps that are
20 similar across the pools, will always have the same affect
21 with respect to an investor and therefore will always,
22 absent specific circumstances, will always have the same MAE
23 with respect to that type of breach finding.

24 Q Now, in addition to discussing loans and types of
25 evidence and groups, and we'll come to this in greater

1 detail, you also in your report presented the basis -- the
2 breach finding supporting a breach and supporting the AMA
3 determination for each breach; is that correct?

4 A Both in the report we did and that information came
5 from the same information that was provided to the plan
6 administrator under the protocol.

7 Q Thank you. We'll come back to that. Mr. --

8 MR. COSENZA: Your Honor, when we get back to that
9 we're going to have an objection because I don't think we
10 were provided with that information.

11 THE COURT: Okay. Well and when we get back to it
12 you can raise it then.

13 MR. COSENZA: Thank you.

14 BY MR. SHUSTER:

15 Q Mr. Aronoff, you were at Duff when it was engaged by
16 the trustees for purposes of this matter and in connection
17 with the protocol?

18 A That's correct.

19 Q Was it your understanding at the time -- and we're
20 going to get into this in greater detail -- but was it your
21 understanding at the time of the protocol that if the
22 trustees ever needed a testifying expert to testify about
23 the design of the trustees' protocol related forensic loan
24 review and breach findings, to the extent there were any,
25 that that testifying expert would be you?

1 A Yes. My ultimate role in the team that worked on this
2 engagement was to provide ultimately an opinion to the Court
3 as to the breach findings, the sufficiency of the breach
4 findings, and the materiality of the breach findings.

5 Q Mr. Grice has opined that you lack independence because
6 you designed and supervised the review and therefore you
7 can't testify to its efficacy and reliability. Do you have
8 a response to that?

9 A To the extent I understand it I disagree with it.

10 Q Why is that?

11 A You know, having read his reports I think there was an
12 attempt to equate the engagement that I was involved with
13 with what it appears he was asked to do on behalf of the
14 plan administrators. He talks about this audit of business
15 processes he was engaged to conduct, which I understand.
16 That was not my purpose. My purpose was not merely to
17 evaluate a process by looking at the conclusions.

18 My engagement, as we discussed yesterday, was to
19 provide an opinion as to whether there were breaches of a
20 set of reps and warranties pertaining to a set of trusts
21 based on the review of a defined universe of mortgage loans
22 and make a determination and provide the Court with guidance
23 as to whether there were material adverse breaches as
24 defined in the agreements.

25 In order to render those opinions I needed information

1 and material on which to base my opinions. And so it was
2 always my intent to make sure that I managed the process
3 that would assess the loans to enable me to make those
4 opinions.

5 The independence point I think is conflated with his
6 notion of an audit. The independence, which is very
7 important to me of the type of review I did, was to make
8 sure that none of the parties to the transaction, that is
9 the trustees or their counsel, had input into my conclusions
10 and interpretation of the information that was coming out of
11 the report. And so in that represent, you know, all the
12 decisions about what evidence should be used, what does a
13 rep and warranty mean with respect to a particular
14 deficiency or defect, and ultimately is there a breach and
15 is it material was my decision. It was not influenced in
16 any way by any of the parties to the transaction.

17 Q Thank you, Mr. Aronoff.

18 Incidentally, the structure of your engagement here
19 where you were engaged at the inception to design a review,
20 supervise -- forensic loan review, supervise its execution,
21 and then opine on its results, is that an engagement
22 structure that -- leaving aside scope and magnitude -- but
23 is that an engagement structure that is familiar to you?

24 A Yes, and you hit on the points. I mean this type of
25 arrangement when asked to render these types of opinions is

1 entirely consistent with the type of analysis and loan
2 reviews that I would conduct in any put-back case, and is
3 consistent with my understanding of how other experts render
4 these reports.

5 You might find it hard to believe but this review was
6 particularly unremarkable but for the enormous scope and the
7 time pressure, and then the -- you know, the hard work that
8 other people at Duff had to do to make sure that the
9 information that came out of my review, on which I base my
10 opinions, was properly communicated pursuant to the terms of
11 the protocol.

12 Q Just to be clear, does your compensation depend in any
13 way on your testimony?

14 A No.

15 Q How are you being compensated?

16 A Hourly.

17 Q Did you ever commit to finding any particular breach
18 rate or dollar value of claims?

19 A No.

20 Q Were you ever asked for?

21 A I was not.

22 Q To the best of your knowledge did any of the loan
23 review firms commit to finding any particular breach rate or
24 dollar value of claims?

25 A No, they did not.

1 Q What happened if the loan review firm -- and we're
2 going to -- we're about to get into the process flow in the
3 review -- but what happened if one of the five forensic loan
4 reviews -- loan review firms that have already been
5 identified reviewed a loan file and found that there was no
6 breach, what happened next?

7 A They moved on to the next loan.

8 Q There was no review by trustee counsel or anyone like
9 that?

10 A No. In a very rare instance to the extent a loan had
11 multiple breaches and was being reviewed in what I call QC-1
12 or QC-2, which was the Duff review after the initial review,
13 if it was obvious in QC that there was another breach
14 finding that was missed that question might be asked, and if
15 it was meaningful might be referred back to the firm.

16 But in the general course if a loan was found to have
17 no breach that loan was put aside and the review continued
18 on the loans that were left. There were always loans to
19 review.

20 Q Do you remember, Mr. Aronoff, in rough numbers how many
21 mortgage loan went through the trustees for forensic review
22 process -- the number of loans that went through originally?

23 A About 170,000.

24 Q And how many were found to have breaches?

25 A About 94,500, but by the time the protocol ended I

1 think that number was done to 92,000.

2 Q Okay. So let's talk about the trustees' loan review
3 process starting with this work chart. Can you just
4 describe in general terms what this is meant to convey,
5 TRDX-176?

6 A Yeah. I think it just shows -- and we'll look at it a
7 little differently later -- but I think it just shows that
8 in terms of the distribution of responsibilities at Duff my
9 primary responsibility was the oversight and to serve as the
10 subject matter expert with respect to the forensic loan
11 review portion of the claim process that was under the
12 protocol.

13 And under my supervision and ultimate responsibility,
14 and I think in my deposition I was asked, you know, what do
15 you mean by senior leader, and I said, I'm the boss and I
16 think people thought that was, you know, I own that, I was.
17 I was responsible for this aspect of the loan reviews. And
18 under me I had two gentlemen, who I've worked with for a
19 number of years at other stops as well, whose names are
20 listed here.

21 Q That Messieurs Campbell and --

22 A Yes, who were responsible for the day-to-day
23 implementation and -- of the policies that the three of us
24 discussed and decided, and they were primarily responsible
25 for the ongoing conversations with the rest of the team and

1 the loan review firms, you know, as the process progressed.

2 And then you can see underneath the kind of Duff unit
3 responsible for the forensic loan review were the five loan
4 review firms that were used to conduct the initial phrase of
5 the reviews.

6 Q I believe there's been some testimony on this already,
7 but would you just briefly describe how the loan review
8 firms were selected and what role, if any, you played in
9 that process?

10 A Sure. In the first instance it was of course important
11 to me that all of these firms were well known in terms of
12 the quality of work that they could perform, and all of
13 these were -- all these firms were not only known but had
14 worked with either members of our team, had worked with Duff
15 in other engagements, or had worked with one or more of the
16 trustees in terms of having some experience and track
17 record.

18 And then quite frankly the major part of the decision
19 came down to the ability of these firms to commit to the
20 resources necessary to engage in a task of this size and the
21 time we had.

22 But you know, those kind of discussions and the
23 discussions about the firms ability to comply with some of
24 the guidelines we were going to impose over them to drive
25 consistency across a process like this were conducted either

1 through phone conversations with the firms to make sure that
2 our opinions of the firm and our views of the firm were
3 still the way they were, and in some cases were buttressed
4 by on-sight visits to the firms just to make sure that they
5 had the operational capabilities to perform the tasks they
6 were asked to perform.

7 Q You may have answered this, but --

8 THE COURT: Yes, Mr. Cosenza?

9 MR. COSENZA: Just I can do this for the last
10 series of questions, but I just want to put something on the
11 record.

12 I really believe the last series of questions
13 we've delved into facts, not expert testimony, and the lines
14 are blurred with Mr. Aronoff. I don't want to make this
15 objection every time, I just want to make a standing
16 objection. I think he's -- this is not only expert work,
17 this is, you know, fact testimony from this time overseeing
18 the process.

19 THE COURT: Mr. Aronoff, why don't we take the
20 opportunity to allow you to have a short break. All right?
21 And if you would leave the courtroom for a few minutes while
22 we discuss this. Someone with come and find you.

23 THE WITNESS: Sure. Thank you.

24 THE COURT: All right? Thank you.

25 There is a restroom through that back door, if

1 that would be more convenient.

2 THE WITNESS: Thank you.

3 THE COURT: And there's a conference room back
4 there you can sit in as well.

5 THE WITNESS: Oh, thank you.

6 THE COURT: Okay?

7 (Witness leaves room)

8 MR. COSENZA: So, Your Honor, just -- you know
9 there have been -- sorry.

10 THE COURT: So, Mr. Cosenza, to be blunt, so what?
11 I mean that's -- I mean he is wearing -- he's being
12 presented as an expert but he exists as a knower of facts as
13 well. I mean -- excuse me -- we've talked about this before
14 that he is what he is. He has done what he has done. So I
15 don't really understand what I would -- what I am to do
16 about that.

17 MR. COSENZA: I guess just to be clear on the
18 record he's, you know, testifying about, you know, being a
19 percipient witness to what happened --

20 THE COURT: Right.

21 MR. COSENZA: -- during the protocol process.

22 THE COURT: But that's a predicate of his ability
23 to give an expert opinion on how good the process was.

24 MR. COSENZA: Your Honor, I think, you know, just
25 to give you an example of why the lines are being blurred,

1 we have in his expert report that he was only opining on the
2 loans that remain at issue in the case. That's expressly in
3 his initial report. And previously we now have him -- now
4 we have him testifying a few minutes ago that there were
5 94,000 loans that came out of the process. So we're having
6 like a blurring of what he did as a fact witness and what's
7 in his expert report, and now we're getting into other
8 additional factual things that he did as a -- you know, the
9 overseer of the protocol process.

10 So that's sort of the issue I'm trying to
11 highlight for the Court and why there's, you know, some
12 confusion on our side based on the opinion he put forward in
13 his initial report.

14 THE COURT: Okay. Mr. Shuster?

15 MR. SHUSTER: I must confess that I -- in every
16 case that I've worked on or seen where there's an expert
17 witness testifying to breaches of reps and warranties they
18 have always set up the review the way he has, they hire a --
19 they rely on a forensic review firm or more, they testify to
20 their qualifications and how they were selected.

21 You know, to the extent that the plan
22 administrator thinks there's daylight between what he
23 originally did and what he's opining on now I'm sure they'll
24 bring that out. Mr. Grice did in his reply report.

25 THE COURT: All right.

1 MR. SHUSTER: So, you know, I don't find there to
2 be a blurring of the lines for me and Mr. Aronoff.

3 THE COURT: Well but I -- maybe blurring of the
4 lines is the wrong word. He exists as a person --

5 MR. SHUSTER: Yes.

6 THE COURT: -- who has done what he has done.

7 MR. SHUSTER: Agreed.

8 THE COURT: And what he did as a factual matter is
9 part of the predicate for his opinions as an expert.

10 MR. SHUSTER: Agreed.

11 THE COURT: And whether or not I -- but there's
12 several levels here, right? If he were being presented as a
13 witness solely to present the findings of the protocol
14 process he designed versus the additional level, which is
15 him looking back on the process that he designed and
16 offering an opinion that it was good, right, that second
17 level has nothing to do with the fact that he knows facts
18 from the original process.

19 So I think my answer, Mr. Cosenza, is you're going
20 to cross-examination him to 'til your hearts content --

21 MR. COSENZA: Sure.

22 THE COURT: -- but to be clear, on all the facts,
23 right? In other words if the plan administrator wants to
24 delve into this, you know, provide descriptions of breach
25 categories and specific instructions for certain breach

1 categories they get to do that, right?

2 MR. SUSTER: Yes.

3 THE COURT: Right?

4 MR. COSENZA: Okay, Your Honor.

5 MR. SHUSTER: I mean I'd like to say yes.

6 THE COURT: Yeah. No, I mean --

7 MR. SHUSTER: It's Your Honor's decision, I
8 don't --

9 THE COURT: -- I'm just clarifying.

10 MR. SHUSTER: -- I'm not anticipating --

11 THE COURT: You don't disagree with that.

12 MR. SHUSTER: I don't plan to object to that.

13 THE COURT: You don't plan to object to that.

14 MR. COSENZA: Okay. As long as we understand the
15 full ground rules, because there was -- I mean there's a gap
16 between the fact and the expert.

17 THE COURT: But then the elephant in the room is,
18 you know, the 92,000 to the 74,000.

19 MR. COSENZA: Yes.

20 THE COURT: I don't know what's going to happen on
21 that, so I'm just going to wait and see what happens.

22 MR. COSENZA: Sure. Thank you, Your Honor.

23 THE COURT: All right? So why don't you folks
24 take a couple of minutes break and then we can get to a
25 stopping point for the lunch break after the next segment.

1 All right? How about coming back in a quick ten minutes?

2 All right?

3 MR. SHUSTER: Thank you, Your Honor.

4 THE COURT: Okay. Thank you.

5 (Recessed at 12:27 p.m.; reconvened at 1:36 p.m.)

6 THE COURT: Ready, Mr. Shuster?

7 MR. SHUSTER: Yes.

8 THE COURT: Thank you for letting me make my
9 meeting.

10 MR. SHUSTER: Not at all, Your Honor. Thank you.

11 BY MR. SHUSTER:

12 Q Mr. Aronoff, good afternoon.

13 A Good afternoon.

14 Q Mr. Aronoff, what guidance was provided to the forensic
15 loan review firms that performed the trustees' loan review
16 for purposes of the protocol?

17 A There were a number of areas where although we were
18 using experienced firms with qualified individuals reviewing
19 the files, there was a strong effort to make sure that,
20 particularly because we had five different firms, that we
21 would do everything we could to assure there was consistency
22 with respect to the results coming up from the firms.

23 So one of the things we did is we provided the loan
24 review firms with what we called the breach map, and that
25 really defined for each loan review firm for each trust what

1 the applicable reps and warranties were and what the
2 potential types of breach findings could be discovered for
3 that trust given the set of reps and warranties.

4 The second thing was to describe --

5 THE COURT: Mr. Cosenza?

6 MR. COSENZA: I'm sorry, Your Honor. This breach
7 map is a document I don't believe was ever produced to us.
8 I don't think it was ever produced in the litigation.

9 THE COURT: Is there a document that exists?

10 MR. SHUSTER: I know that we attached a breach
11 mapping to Mr. Aronoff's report, so --

12 THE COURT: Well, Mr. Aronoff, why don't we ask
13 you. This first bullet, if you will, provided a mapping of
14 breach findings, does that reflect a written document? Is
15 that a reference to a written document?

16 THE WITNESS: I don't know, I refer to it as a
17 term of art that there's an understanding or an -- and to
18 the extent I explained -- I discuss this in my report and
19 explained it -- there is an exhibit which shows the
20 information.

21 THE COURT: Can you direct us to it, please.

22 THE WITNESS: Sure.

23 THE COURT: Is it in your --

24 THE WITNESS: It's in my --

25 THE COURT: -- affirmative report?

1 THE WITNESS: I believe so, Your Honor.

2 THE COURT: Okay.

3 THE WITNESS: Just let me refer my recollection.

4 Okay. Table of contents, should be there. Yeah, if you
5 look at Exhibit 14.

6 THE COURT: Okay. Is that in -- that's in binder
7 two?

8 THE WITNESS: It's in binder two, yes, Your Honor.

9 MR. SHUSTER: It's TRX-618.

10 THE WITNESS: And I simply refer to it as a
11 mapping.

12 THE COURT: I'm sorry, I'm not with you yet.
13 TRX-618. Okay. Is that -- that's what --

14 THE WITNESS: This is a compendium, for lack of a
15 better term, of the mapping of -- for each trust.

16 THE COURT: Okay. So my question is then what --
17 this is that, it says it's a mapping. When was it created
18 though?

19 THE WITNESS: This was created for purposes of the
20 report.

21 THE COURT: Okay. So --

22 MR. COSENZA: And that's my objection, Your Honor.

23 THE COURT: Okay.

24 THE WITNESS: There --

25 THE COURT: Okay, hold on, please.

1 So just to go back to where this started. In the
2 demonstrative it says that you provided a mapping of breach
3 findings to representations and warranties to each trust,
4 but you didn't provide this document to the review firms.

5 THE WITNESS: This is not the document that was
6 provided to the review firms.

7 THE COURT: Where is the document that was
8 provided to the review firms?

9 THE WITNESS: I don't know.

10 THE COURT: Okay. Thank you.

11 MR. COSENZA: Thank you, Your Honor.

12 THE COURT: Keep going I guess, Mr. Shuster.

13 BY MR. SHUSTER:

14 Q So -- okay, you provided a mapping. Next?

15 A Get this out of my way.

16 We also provided descriptions of the various breach
17 categories so that there'd be consistencies among the firms
18 as to calling a particular defect the same thing, because
19 there might be slight variances among the firms.

20 THE COURT: Mr. Cosenza.

21 MR. COSENZA: Same objection, Your Honor. I don't
22 know where this is -- this document, the breaches
23 descriptions that were given to the loan review firm.

24 THE COURT: Why don't you guys come up for a
25 second.

1 (At sidebar off the record)

2 BY MR. SHUSTER:

3 Q Next?

4 A Yeah. There were -- the third thing -- third major
5 thing that was important was to communicate frequently with
6 the loan review firms as results of their reviews started to
7 percolate up to Duff and to our team, and to that extent,
8 you know, recognize that as with all loan reviews this is an
9 iterative process that although you have professionals who
10 understand the reps and the potential deficiencies and
11 defects, particularly when you have the amount of data and
12 information that was being communicated here, you want to
13 make sure that everyone is on the same page, and one of the
14 ways to do that is to provide feedback for the loan review
15 firms based on the reviews of -- that they've already
16 submitted for review.

17 And along with that one of the ways that we attempted
18 to drive consistency and clarity was through consistent
19 formatting of the information that was communicated back up
20 to the firm.

21 So just in terms of the data exchange all of the firms
22 for the most part were asked to communicate the critical
23 information in the same format so that it could be easily
24 incorporated into the data management system, which was the
25 repository of all this information.

1 And then the final --

2 THE COURT: Can I just ask you a -- at that point,
3 so you're talking about consistency in terms of what comes
4 back to you, right?

5 THE WITNESS: Yes.

6 THE COURT: Okay. What about consistency in terms
7 of what each of the review firms did as they were facing the
8 file?

9 THE WITNESS: Yes.

10 THE COURT: Did you do anything to ensure
11 consistency among the firms in that regard?

12 THE WITNESS: That was the discussion with them,
13 the presentation to them of these are the types of breach
14 findings we would expect the potential universe of potential
15 breach findings that would be evident given this set of reps
16 and warranties. So, for example, if there's no --

17 THE COURT: I'm asking a different question,
18 Mr. Aronoff. I'm asking the question of review firm A is
19 about to get started. The servicers have sent them 10,000
20 files and they have assembled the review of people who are
21 going to do this. Right? Actual people --

22 THE WITNESS: Yes.

23 THE COURT: -- who are going to look through the
24 files. At that moment what was there that told each of
25 those actual people what to do?

1 THE WITNESS: They -- each of the firms that was
2 retained was engaged in this as their primary business, so I
3 don't think there was much discussion or concern about
4 telling the senior loan reviewers at each of the loan review
5 firms that was used how to conduct the review, and quite
6 frankly some of them might gone about reaching their
7 conclusions in the documents they referred to in a slightly
8 different fashion since there is some art as well as
9 science.

10 But we gave them guidance as to not only the types
11 of deficiencies they might expect to find given the trust
12 they were assigned, but also as we saw the results more of
13 those kinds of substantive discussions about do this and
14 don't do that and think about this and we don't want to see
15 that as a breach anymore, those kinds of discussions were
16 more often held as soon as we had the ability to see some
17 results from their review as opposed to initially giving
18 them guidance.

19 THE COURT: Okay. Thank you.

20 MR. SHUSTER: Thank you.

21 BY MR. SHUSTER:

22 Q Did you -- for example, did you in any particular area
23 say in income breaches did you identify tolerance levels or
24 anything like that? Do you know what I mean by that?

25 A I do. For certain kind of rules of the road to drive

1 consistency, because there might have been some slight
2 differences on the margin, you know, based on other reviews
3 or internal policy.

4 So, for example, with income they may have identified a
5 deficiency but the rule was if it's not a greater than five
6 percent difference in the stated income and the evidence of
7 another income then we didn't want to see it at all.

8 To the extent there was contradictory evidence in the
9 file, you know, don't cherry pick, don't just show us
10 documents that you think support a breach, view any piece of
11 evidence or any document that you think supports a breach in
12 the totality of the file. And certain other things.

13 We -- without putting a tolerance on it had
14 conversation with them about we didn't want to see trivial
15 debt amounts. So if there was a difference of a dollar or
16 two in the debt amount so be it, that -- you know, we had a
17 lot of loans to look through and we wanted to identify the
18 most clear cut, well supported breaches.

19 Q Okay. So please continue on TRDX-178. Thank you, sir.

20 A Yes. And then the last kind of check to drive
21 consistency and make sure that the firms were doing -- were
22 performing as we expected them to given their pedigree and
23 our track record with them was once a loan percolated up
24 from the loan review firm it was subjected to two different
25 levels of review at Duff.

1 Q And is it your review that the process and guidance you
2 described were applied consistently?

3 A It's my opinion, I don't know if it's my review. I
4 think you asked if it was my review.

5 Q If it's your view?

6 A It's my view. Yes, it is.

7 Q Now, let's just talk about the -- we're going to get
8 into the process flow in just a moment. But evidentiary
9 types and sources that were used in the review, you identify
10 those here on TRDX-179, or at least many of them, correct?

11 A Yes.

12 Q Do you discuss these in your reports?

13 A I specifically -- I think this -- well this list was
14 generated from certain -- quite a few documentary support
15 types that I discussed in detail in my rebuttal report.

16 Q So let's just turn to that, which is TRX-625.

17 A I think the discussion starts around page 16.

18 Q So what I'd like you to focus on, Mr. Aronoff, is to
19 address the evidence types that you cover there and just
20 focus, if you would, on explaining what it is and why in
21 your view and experience it's a reliable evidentiary source.
22 We may or may not get to Mr. Grice's criticisms, but focus
23 on those two aspects if you would.

24 A Okay. I'll try.

25 Okay. The first type of documents that I address in

1 the report are MIRS, Accurant, and LexisNexis, these are
2 third-party data sources, as I say, that are widely used in
3 the industry for both origination and forensic reviews, many
4 of which were used in many cases by the seller or the
5 servicer or both, and I point out where Aurora has used
6 Accurant, MIRS, Clear, which is a LexisNexis product, in a
7 number of the loan files that were reviewed here.

8 In addition some of the rebuttal comments that we
9 received were based on reference to those very same
10 documents as well.

11 Q So let's take them one by one. Why do you consider
12 MIRS a reliable source? What was it used for and why do you
13 consider it a reliable source for that?

14 A MIRS would be a report, as are Accurant and other
15 LexisNexis products, that provide a snapshot in time around
16 the origination date is what the circumstances were that
17 existed when the loan was originated.

18 So, for example, if there was a number of mortgage
19 loans that the borrower had open and had failed to disclose
20 in connection with the origination of the loan we could see
21 on the historical section of the MIRS report which -- those
22 specific mortgage loans associated with the borrower and
23 conclude that they in fact existed at the time the loan was
24 made and the borrower failed to disclose them. So --

25 Q Please continue, sorry. I was going to ask you how

1 reliable is MIRS in your experience?

2 A Very reliable. That's not to say that from time to
3 time there aren't mistakes on any of these, and sometimes
4 you see a single mistake compounded on all of them because
5 they pick it up. But in terms of a customary source that's
6 used in the industry and deemed to be reliable, again, MIRS
7 and these other sources, the point of this section with each
8 particular type of evidentiary support was to put it in
9 context and explain that it is used in the industry,
10 evidence that it's used in the industry is that it was used
11 by the sellers and the servicers in this case, in many cases
12 Lehman entities, and to also cite other put-back cases of
13 the handful that we have available to us where discussions
14 of the reliability or customary use of these particular
15 sources has been addressed by a court, and that discussion
16 is embodied in an opinion. I cited those discussions and
17 those areas for reference.

18 Similarly to the extent there were -- there was
19 available to me information about Lehman and the conduct of
20 its general business as a participant in the residential
21 mortgage market I cited some examples from their own guides
22 and policies where they have addressed the use of these and
23 has in essence said that these are the sources that we will
24 use.

25 So all those go to the reliability. And in addition

1 they're the types of sources that I've used throughout my
2 career, again, recognizing that on the margin there may with
3 mistakes, as Mr. Grice kept saying, nothing the perfect,
4 humans are involved, but you know, again, these are useful
5 tools and when properly used in the hands of an experienced
6 loan reviewer who can take the information on it and
7 evaluate it in the context of the whole file we don't have
8 anything else to use.

9 Q So there's MIRS -- did what you just say cover MIRS as
10 well as Accurint and LexisNexis?

11 A Yes, and it -- I mean the general comments cover all of
12 the sources, which we can walk through in -- specifically.

13 Q All right. Let's go to BLS.

14 A Okay. BLS is more specific. The Accurint, MIRS, and
15 LexisNexis type tools can be used for verifying or observing
16 a variety of data points concerning the borrower.

17 Q Such as?

18 A Credit, real estate, holdings, occupancy. They verify
19 socials if they match and just make sure you're dealing with
20 the same borrower. So there's a lot of different
21 information on those kinds of reports, which depending upon
22 the issues evident in the file may be used, and you know, in
23 the manner that's described in the narrative and in the
24 claim package that accompanies that loan.

25 BLS is very specific. BLS was used only in connection

1 with the process around verifying a borrower's income. So,
2 you know, that's a very specific tool. It's a database that
3 shows borrowers incomes in a particular geographic area at a
4 particular time based on a particular job description. And
5 so BLS is illustrative in terms of trying to look at those
6 features of any particular borrower and comparing the
7 borrower's income to this statistical database of
8 information.

9 Q Was -- were any guidelines applied in terms of the use
10 of BLS?

11 A Yes. Generally again for any particular geographic
12 location, job description, and time frame BLS will give you
13 the median salary, the salary, the 75th percentile of the
14 data points, and the 90th percentile, and in order to
15 maintain some level of conservatism in our reviews we ask
16 the loan review firms, which is fairly standard in the
17 industry, to only refer to the 90th percentile and give the
18 benefit to the borrower of having been in the highest wage
19 earners in that category.

20 Q What about type of borrower that BLS was applied to?

21 A It was -- the guidance was to use it in those instances
22 -- well BLS only gathers data regarding wage earners, and it
23 only gathers data with some small exceptions about a
24 borrower's base salary. To the extent it's a type of job
25 where tips or bonuses are -- like a waitress, it may include

1 some component of tips if that's included in the information
2 that the employer reports.

3 So one of the reasons this is reliable data is it comes
4 to the government from the employer about how much their
5 employees are paid. And so --

6 THE COURT: But let's accomplish something,
7 Mr. Aronoff. We're not just talking about waitresses.

8 THE WITNESS: I'm sorry?

9 THE COURT: Bankers get a salary and a bonus, and
10 BLS does not -- but only reports the salary, right? BLS
11 only reflects survey results that asks the question what
12 does a person who indicates that they work as this job
13 description earn, right?

14 THE WITNESS: That's absolutely right.

15 THE COURT: Okay.

16 THE WITNESS: It only captures base salary.

17 THE COURT: So it's not just about waitresses,
18 it's about all kinds of wage earners throughout the
19 socioeconomic spectrum, right?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Okay.

22 THE WITNESS: The distinction I was drawing is
23 from -- is that BLS generally does not capture income
24 information about self-employed borrowers.

25 THE COURT: Well it also doesn't capture

1 information about tips, bonuses, tuition reimbursement,
2 miscellaneous income that might be reportable on a 1099,
3 side businesses, selling stuff on eBay, or anything else
4 like that, right?

5 THE WITNESS: That's absolutely right.

6 THE COURT: Thank you.

7 BY MR. SHUSTER:

8 Q Is BLS used in the industry to verify income or used in
9 repurchase reviews in your experience?

10 A It is, and its primary value is in forensic reviews.
11 There are other services like Asalary.com for instance that
12 may be used at origination to access the reasonableness of
13 income in a stated income program by a loan originator, but
14 BLS is particularly valuable in the context of a forensic
15 review because it gives you historical. You can go back to
16 a particular year and see what the data was there, whereas
17 some of the other data sources regarding income ranges are
18 typically only good for 12 or 18 months. They don't have
19 the historical data points that BLS contains.

20 Q Let's go onto verifications of employment or VOEs,
21 please.

22 A Okay. A VOE is something that simply evidences whether
23 or not the borrower was employed at the -- in the first
24 instance was employed at the job stated. And in some
25 instances the VOE may contain additional information

1 regarding start dates, termination dates, and some level of
2 income information as well, and they -- in these files there
3 were either VOEs that were obtained at the time of
4 origination that may or may not comport with the information
5 that was otherwise exchanged in the application process, and
6 then there are audit VOEs, and any time you put an audit in
7 front of it audit VOE we run a credit report it indicates it
8 was an informational source, a credit report or a VOE that
9 was acquired at the time of the forensic review with
10 reference to information that existed at the time the loan
11 was originated.

12 So in addition to the origination VOEs a very valuable
13 tool if there is the ability to contact employers an audit
14 VOE in some cases would have been obtained and served as the
15 primary evidence as to what -- as the basis for a breach
16 finding.

17 Q Just so we're clear on terminology. By an audit VOE
18 you mean a VOE, a verification of employment or income that
19 was performed by the loan review firms during the trustees'
20 loan review process for purposes of the protocol?

21 A That's correct.

22 Q Okay. Let's -- and you consider that verifications of
23 employment and income generally reliable?

24 A Yes.

25 Q And you've seen them used in the ordinary course of

1 business?

2 A Yes. And again in the context of this section of the
3 rebuttal report I try and support my rationale for that
4 view. And not only that I've used them before and in my
5 experience they're relatively well understood and well used,
6 but again, cite to other evidence of the same use in the
7 same context in the marketplace in other contexts.

8 Q Let's turn -- thank you, sir. Let's turn to tax
9 documents.

10 A Yep, that's the fourth category. Similar explanation.
11 In tax documents were primarily used to income, but can also
12 be used to employment purposes and occupancy purposes. As
13 you, you know, may find information about all of those
14 things in the borrower's tax return that conflict or call
15 into question information that was provided in the
16 origination process.

17 Again, commonly used, it was one of the most frequently
18 used sources of income, particularly with misrepresentation
19 of income.

20 And again, all of these documents, when properly used
21 in the hands of an experienced underwriter, provide some
22 information that can be reasonably relied upon to help the
23 loan reviewer determine whether it's more likely than not
24 that such a breach existed -- such a breach finding existed.

25 Q And what do you mean, just to be precise if not unduly

1 pedantic about it, what do you mean by tax documents?

2 A Primarily tax returns, but it could also be 1099s, it
3 could be W-2s. I guess tangentially pay stubs. But
4 primarily W-2s, 1099s, and the various tax return documents.

5 Q And are these sorts of documents like others you've
6 described in common and ordinary use in the mortgage
7 industry for purposes of loan underwriting or otherwise?

8 A Yes, and not surprisingly there was a concerted effort
9 here to conduct this review in a way that reviews of this
10 type have been conducted customarily. There was no attempt
11 to find new and different sources of basing breach findings
12 on in this case given that the reps and warranties were
13 fairly standard and fairly well understood in the industry.

14 Q Okay. Thank you. Let's go to the work number, please.

15 A Yeah. The work number is an alternative way for a loan
16 review firm or a credit originator to obtain information
17 from -- about the borrower from their employer. The work
18 number is simply a service that companies retain so that
19 they're not bothered with these kinds of inquiries from
20 potential lenders to their employees, and so they're kind of
21 a clearinghouse for information.

22 The companies supply various bits of information,
23 again, employment, start, termination dates, some income
24 information, verification that employee is in fact employed
25 there, and rather than calling a company directly a number

1 of companies simply refer their employees when they need to
2 to tell any potential lender who's going to perform a credit
3 underwriting, it's called a work number for all that
4 applicable information.

5 Q And that is -- is that a source of information that's
6 commonly used and considered reliable in the industry?

7 A Yes, it is.

8 Q Please go on if you would to data verify.

9 A Again, with all these they all provide different
10 aspects of information. As I say in the report, data verify
11 is used in due diligence, QC, repurchase reviews. It's well
12 understood and well used in the industry.

13 The plan administrator accepted claims where data
14 verify was used as the basis for the claim. I cite, you
15 know, a number of instances, both in credit review type
16 policy documentation, depositions of loan review experts and
17 other cases where those were available. And in my view it's
18 a well understood and well used supporting document for
19 forensic reviews of this type.

20 Q Would you move onto credit reports, please.

21 A Yes. And I think there's been some discussion already
22 about credit reports. Like all of these documents they are
23 not entirely free from error, we know that, and the loan
24 professionals that look at them are well aware of that. And
25 again, all of these documents are taken for what they're

1 worth, which is they are in the terms of credit reports
2 really all we have. Multi-trillion dollar consumer lending
3 industry is driven by credit reports. Even with --

4 THE COURT: You say that as if it's a good thing.

5 THE WITNESS: It is what it is. I don't
6 necessarily think it's the perfect way to do it, but it's
7 all we have. And when someone goes into a department store
8 and applies for credit electronically there's a reference to
9 their credit report and a decision is made. When every --
10 almost every consumer walks into a mortgage company and
11 wants a loan the lending institution has to refer to their
12 credit report.

13 And so one of the sources, and I think we'd be
14 deficient if we excluded it, one of the sources that we
15 looked at and gave credence to, to the extent it helped
16 support a breach finding, was the credit report.

17 BY MR. SHUSTER:

18 Q Mr. -- all that said and just again not to be unduly
19 pedantic about it -- but are credit reports, you know, in
20 wide use in the mortgage industry and generally considered
21 reliable in your opinions for the purposes for which they're
22 -- in your experience for the purposes for which they're
23 used?

24 A They are, and they're the source data for the
25 calculation of a FICO score as well, which seems, you know,

1 to come into increasingly more prevalent use, and you know,
2 because it's -- so FICO, credit scores despite all of the
3 understanding or lack of understanding about their
4 limitations are well understood to be used in evaluating
5 credit, decisions initially, and evaluating the quality of
6 credit decisions that were made in the context of a forensic
7 loan review.

8 Q So am I correct that there were both origination and
9 what you refer to as audit credit reports that were used in
10 the process?

11 A That's correct.

12 Q And so -- just to get through this quickly. An
13 origination report would have been an origination credit
14 report run at the time that the loan was being underwritten?

15 A That's correct.

16 Q And an audit credit report would have been one that
17 would have been pulled by one of the loan review firms
18 during the course of the review for purposes of the
19 protocol?

20 A In most cases. From time to time there were audit
21 credit reports that had been pulled by the servicer in
22 connection with a modification request or some other request
23 for relief.

24 Q Thank you.

25 A So it wasn't the origination date --

1 Q Thank you.

2 A -- but some time subsequent to that.

3 Q So let's take the rest of them as a group. CPA letter,
4 Cydex (ph), business records, and licenses, compliances,
5 quitclaim deeds, and identity theft affidavits.

6 Generally have you seen these be used for purposes of
7 forensic loan reviews or otherwise in the mortgage loan
8 industry and are they considered reliable for the purposes
9 for which they're used?

10 A Some of those much less frequently than others. Some
11 of these just given the enormous sample size of files being
12 reviewed here, you know, we looked at and considered, for
13 example, identity theft affidavits is not something that
14 normally pops up in a 4- or 500 loan review, but to the
15 extent in the context of the file there was an affidavit
16 that oh, by the way when the servicer checked to see if this
17 borrower actually existed they found the owner of that
18 social security number and there was evidence that the
19 original borrower was not who they stated they were, and we
20 thought that was pretty compelling documentary evidence that
21 something was awry at the time of origination.

22 Q Now you -- thank you, Mr. Aronoff. Now, you've used
23 the -- you mentioned that these are all useful tools in the
24 hands of an experienced loan reviewer and we've heard the
25 term holistic loan review used a lot. Without necessarily

1 adopting that terminology would you -- was -- were holistic
2 loan reviews performed here for purposes of the trustees'
3 forensic loan reviews?

4 A To the extent that holistic loan review is to consider
5 the quality and usefulness of a particular piece of
6 supporting evidence to support the conclusion that's being
7 drawn, if that means to consider that not just because it's
8 on a tax return, but to consider that data point in the
9 context or totality of the entire file, then yes, and that's
10 what the firms were expected to do.

11 And to the extent that it was believed or discovered in
12 QC that there was any kind of failure to evaluate the
13 sufficiency or meaning of any of these sources of evidence
14 properly in the context of the entire file that was
15 something that was communicated back to the firms.

16 Q Very good. Thank you.

17 Okay. Let's talk about the loan review process and
18 move our way to the quality control. But let's start at the
19 beginning. Why don't you take us through it, if you would,
20 please.

21 A Okay. This just breaks into five broad stages, the
22 forensic loan review process that determine whether or not
23 there was actually a material adverse breach that would be
24 submitted as a claim pursuant to the protocol.

25 The first one, completeness review, was something that

1 I didn't manage, that was a determination as loan files came
2 in by the loan review firms initially as to whether or not
3 there was sufficient documents in the file to even commence
4 a loan review. Was there a meaningful amount of
5 documentation to even commence a loan review? And to the
6 extent a file was determined to be complete enough for a
7 review the review commenced.

8 And the first level, we'll call the initial loan
9 review, was the loan review professional at the loan review
10 firm doing their thing, and their thing consisted of, as
11 I've said here, basically reviewing the entire file,
12 verifying key information, identifying a breach, if there
13 was one, a breach finding if there was one, and then
14 describing the breach finding in sufficient detail to allow
15 whoever the next level reviewer was or the PA sufficient
16 information to see here's the finding we're talking about,
17 here's the factual threshold we're talking about, and here's
18 the supporting documentation that we're talking about.

19 At a minimum what's described here is sufficient to
20 show the finding, and in addition to that of course the
21 critical documents that were the basis for that initial
22 narrative were contained in the claim file, which was
23 assembled by the loan review firms.

24 And so that was really the -- and as I eluded to of
25 course at that stage they could also review a file and say

1 there's no breach here and the process with respect to that
2 loan.

3 Q Okay. Next stage.

4 A Next stage, each of the five due diligence loan review
5 firms had their own internal QC. And that was important to
6 us and it was clearly important to them. They're in the
7 business of identifying meaningful breaches and they wanted
8 to make sure that when work product went out of their firms
9 that it was done properly in accordance with their policies,
10 in accordance with our rules.

11 And for the most part they didn't -- as it says, it
12 ensured compliance with the industry standards and guidance.
13 It confirmed the existence of a breach finding and that the
14 work product was in proper format in terms of the data.
15 There was some data integrity QC that was done to varying
16 degrees of the different firms.

17 THE COURT: What does that mean, Mr. Aronoff, data
18 integrity?

19 THE WITNESS: To make sure that the information, so
20 meta checks to make sure that the information that was being
21 communicated is just correct on its face. The property
22 address is correct. The borrower's name is correct, and
23 those types of things.

24 THE COURT: What specific knowledge do you have of
25 any under -- any QC function that was performed in any of

1 the five review firms?

2 THE WITNESS: Well, there were initial
3 conversations with them. There was --

4 THE COURT: Between whom and whom?

5 THE WITNESS: Duff & Phelps.

6 THE COURT: Who? That's not a person.

7 THE WITNESS: In some cases it was me. In not all
8 cases it was -- I didn't have that discussion. And then --

9 THE COURT: And who was the conversation with at
10 the review firm?

11 THE WITNESS: It would have been a senior
12 representative of the company who was in the appropriate
13 position to talk about these kinds of issues with us.

14 THE COURT: These kinds of issues being a quality
15 control that that firm --

16 THE WITNESS: That --

17 THE COURT: -- conducted?

18 THE WITNESS: Among other things. There were
19 discussions about the process, the resources, and one of the
20 --

21 THE COURT: Well, I'm asking a very specific
22 question. I'm asking for you to tell me specifically about
23 what was said between Duff & Phelps, as you said, and any
24 review firm to the question of what comprised their quality
25 control process?

1 THE WITNESS: What -- when I was involved in the
2 conversations?

3 THE COURT: Yes.

4 THE WITNESS: I asked them do you have a QC
5 process.

6 THE COURT: Okay. And --

7 THE WITNESS: And then if they said yes, I said,
8 explain it to me.

9 THE COURT: Okay. So --

10 THE WITNESS: Talk to me about it.

11 THE COURT: So tell me about -- so tell me about
12 one.

13 THE WITNESS: In most -- in my experience with the
14 firms here the answer I wanted to see if they were qualified
15 was that they have experienced professionals reviewing the
16 work of the initial loan reviewer.

17 THE COURT: So that was --

18 THE WITNESS: -- number one.

19 THE COURT: That was the conversation?

20 THE WITNESS: Number one.

21 THE COURT: Yes.

22 THE WITNESS: And number two, that there was some
23 data integrity component to confirming that the information
24 that was input by someone at their firm that was ultimately
25 going into their deliverable to us was audited and confirmed

1 to the extent possible before it was sent up to us.

2 THE COURT: Thank you.

3 BY MR. SHUSTER:

4 Q So --

5 THE WITNESS: Can I add one other thing because it
6 bears on this, I think.

7 THE COURT: Yes.

8 THE WITNESS: Prior to the issuance of my report I
9 did go back and talk to each due diligence firm to re-
10 familiarize myself and confirm that some of the
11 conversations and discussions that had taken place back a
12 number of years previously were, in fact, as I remembered
13 them or as were communicated to me by Duff & Phelps when I
14 did my due diligence at Duff to reacquaint myself with the
15 process, particularly those aspects of the process that I
16 might not have been personally involved with.

17 So prior to the issuance of the report I talked to
18 every one of the five due diligence firms and I -- and I
19 asked the very same questions about QC.

20 THE COURT: Okay. Thank you.

21 BY MR. SHUSTER:

22 Q Are you done with step two? Have you covered it to
23 your satisfaction?

24 A Yes.

25 Q Okay. Let's move on to the next phase.

1 A Yeah. Step three was what we call QC-1 and that was
2 after the information regarding a particular loan and the
3 breach findings that may have been associated with that loan
4 were communicated to my team at Duff & Phelps, we went
5 through the QC review as described here to make sure the
6 breach finding was accurately described, review the claim
7 package, verify the claim package documents actually
8 supported the breach and were referenced properly, ensure
9 the breach finding was described which seems a lot like the
10 first one, and refer -- and then to the extent they had
11 finished their review they referred the package to QC-2
12 either for a final review or for resolution of any questions
13 that arose during the QC-1 process.

14 Q By the "they" in the sentence you just used you mean
15 the QC-1 reviewers?

16 A That's right.

17 Q Okay. Would you take us to the next step, please?

18 A The next step is QC-2 and this is where any questions
19 that may have arisen by the QC-1 reviewer were addressed;
20 that is, the QC-2 they either could have been answered or
21 referred back to the loan review firm if it rose to that
22 level, taken into account or not. A question may have
23 resulted in a QC-2, the breach finding getting removed and
24 getting kick.

25 QC-2 also verified accepted or rejected findings

1 ultimately or as I said referred a particular finding with
2 significant or meaningful open questions back to the loan
3 review firm to see, you know, why -- why they reached the
4 conclusion they reached if it wasn't clear in the file.

5 There was also a check to make sure that for that loan
6 in that trust that breach finding was actually connected to
7 a representation and warranty that existed in that trust.

8 There was also a review of the narratives for clarity
9 and consistency in addition to what was done at QC-1. And
10 then the final materiality determination on an individual
11 breach finding basis based on the guidance that was provided
12 with respect to various types of breach findings and reps
13 and warranties was made for that breach finding.

14 Q So having described all that, Mr. Aronoff, and just for
15 the perfect clarity what is your opinion concerning the
16 reliability of the trustees' loan review process and the
17 extent to which it conformed with a stub -- established
18 custom and practices?

19 A Yeah. It's -- I -- it's the same as we discussed
20 yesterday; that the conclusions drawn or the breach findings
21 that were the result of a loan review process were
22 reasonable and thoughtful because they were conducted by
23 experienced loan review professionals consistent with the
24 way in which such loan reviews are conducted in the
25 industry, including using the types of sources and analysis

1 that are customarily used in reviews of this type.

2 Q And you may have just answered this, but, again, just
3 for perfect clarity what is your opinion concerning the
4 validity of the breach findings that you present in your
5 report and that you're opining on here in this hearing?

6 A They are valid and they are material and adverse to the
7 interest of certificate owners.

8 Q Now various -- we've talked a little bit about various
9 criticisms that Mr. Grice has made about some of your
10 process or conclusions, and I certainly don't want to get
11 into all of those. But he did -- he did say that the
12 withdrawing of claims from the time of the protocol to the
13 time of issuance of your report reflects that the trustees'
14 processes was unreliable. Do you agree with that, and if
15 you do not, why, why not?

16 THE COURT: Yes, Mr. Cosenza.

17 MR. COSENZA: Your Honor, I --

18 THE COURT: Come on up.

19 MR. COSENZA: -- would object to this line of
20 questioning.

21 (Sidebar off the record)

22 THE COURT: Okay.

23 MR. COSENZA: I want to --

24 THE COURT: Mr. Cosenza is conferring with his --

25 MR. COSENZA: Sure, Your Honor.

1 THE COURT: -- esteemed colleagues.

2 MR. COSENZA: I'm trying to give them a --

3 MR. SHUSTER: No. Given -- what I was going to say
4 is given the sidebar we just had, I just want to reflect a
5 little bit on how I want to come at this, so I'll go onto
6 another topic --

7 THE COURT: Okay. So we'll hold that question.

8 MR. SHUSTER: -- and come back to it.

9 THE COURT: Okay. Very good. I see that the sun
10 is in -- it looks like it's shining right in Mr. Cosenza's
11 face over here.

12 MR. COSENZA: I can take as much -- I'm constantly
13 indoors, Your Honor. Getting some sun is good for me.

14 THE COURT: Okay. If it's -- if it bothers you
15 then we can close the curtain a little bit.

16 MR. COSENZA: Thank you

17 THE COURT: Okay. And the same goes for somebody
18 back there is right in the sun.

19 (Laughter)

20 THE COURT: It must feel good today.

21 Okay.

22 MR. SHUSTER: That is Mr. Zewetsig (phonetic) from
23 U.S. Bank.

24 THE COURT: Hello, sir.

25 BY MR. SHUSTER:

1 Q Okay. You're aware, Mr. Aronoff, that the plan
2 administrator put about a third of the loans that were put
3 through the protocol process on hold?

4 A Yes, I am.

5 Q Had you ever seen that before incidentally where
6 someone who was the recipient of put back claims refused to
7 review breach findings because certain documents were
8 missing?

9 A Yes, but not those documents. I've dealt with -- I've
10 been involved in situations where the response was we're not
11 going to review a file because the supporting documentation
12 for that claim is not here missing, but I've never faced a
13 situation where, as a result documents that had no bearing
14 on the breach finding and the materiality determination,
15 that the party to whom the claim was made didn't react to
16 the breach finding.

17 Q So you know the four categories are servicing notes,
18 payment histories, loss certifications and corporate expense
19 logs, correct?

20 A Yes.

21 Q Can a breach determination be made without those
22 documents?

23 A It was in almost 30,000 incidents. So, yes, I believe
24 it can.

25 Q And can an AMA determination be made without those

1 documents?

2 A Based on my understanding of AMA analysis it can.

3 Q And have you ever calculated purchase price on a loan?

4 A I have.

5 Q And did you use the documents, any of those four
6 categories of documents or did you use other documents?

7 A Simply to calculate purchase price those documents were
8 not -- I have not used those documents to calculate purchase
9 price. No.

10 Q When have you used?

11 A Primarily the remittance reports or servicer
12 information regarding the status of the loan.

13 Q Mr. -- thank you.

14 Mr. Grice states that there were some errors in the
15 trustees' breach presentation. So does Mr. Trumpp. Do you
16 have a response to that?

17 A That's one area in which we agree. There were mistakes
18 made. The mistakes were -- there was an attempt to keep the
19 mistakes at a minimum and in some instances, in the context
20 of the step two rebuttal process as well as the exchanges
21 among the experts after the reports were filed some specific
22 mistakes in -- with respect to a handful of breach findings
23 were identified.

24 And to the extent we reviewed the file and agreed that
25 a mistake had been made, those handful of claims, and I

1 think post-submission of affirmative reports which included
2 77,000 loans I think at the end of the day I agreed on about
3 33, 34 loans where there -- where a mistake had been
4 identified by the plan administrator or Mr. Grice, and in
5 those instances those loans were withdrawn.

6 But, you know, the -- every attempt -- great pains were
7 taken to make sure that the results of the review were
8 thoughtful and as accurate as possible. And that was
9 important to me because those are the basis of the opinions
10 that I'm being asked to offer in court today.

11 Q So where there were errors, though, the plan
12 administrator in the ordinary course of the protocol would
13 point them out?

14 A Occasionally. Most of the rebuttals that were received
15 in connection with step two were not sufficiently specific
16 or particularized to require the file be opened. For the
17 most part they contained statements of a fundamental
18 difference and approach. This document is not sufficient to
19 support the claim because of its evidentiary weight, not
20 because there wasn't a tax return in the file that showed an
21 income number that was half of the stated income. There
22 were also statements about MAE that reflected a fundamental
23 difference in point of view about what MAE was, and so on.

24 So in those instances in step two where there was a
25 rebuttal that was directly -- that directly discussed a

1 particular fact that was used to support the claim and the
2 statement was that it was wrong or the document didn't say
3 that or there was -- you said there's no appraisal in the
4 file and we found one, to the extent the rebuttals allowed
5 us at Duff, my team at Duff to respond by reopening the file
6 and finding specifically what the criticism was, we did so.

7 In most cases we continued to believe the claim was
8 supported and we disagreed with the comment. But in those
9 instances where those particularized rebuttals were made and
10 a mistake was discovered, those claims were withdrawn.

11 Q In your opinion are -- is the presence of some degree
12 of errors entirely avoidable in a forensic loan review of
13 this magnitude?

14 A We try, but, no, it's not avoid -- entirely avoidable.

15 Q Okay.

16 MR. SHUSTER: Your Honor, I think this would be a
17 good time for a break because I intend to get into some
18 loans.

19 THE COURT: Okay. That would be great. And I'm
20 going to have to take another break at 3:30 to take a call
21 for about five minutes.

22 So come back in ten and we'll go until 3:30. All
23 right.

24 MR. SHUSTER: Thank you, Your Honor.

25 THE COURT: Thank you.

1 How late did you want to go today, Mr. Shuster?

2 MR. SHUSTER: Five. Is five good with the Court?

3 THE COURT: Yes.

4 (Recessed at 2:40 p.m.; reconvened at 3:02 p.m.)

5 THE COURT: Please have a seat.

6 Okay. Are we -- we're moving onto a loan?

7 MR. SHUSTER: Yes, Your Honor.

8 THE COURT: All right.

9 MR. SHUSTER: And we have some loan binders to hand
10 up if --

11 THE COURT: Right.

12 MR. SHUSTER: -- we may approach?

13 THE COURT: Yes.

14 (Pause)

15 MR. SHUSTER: So we're going to proceed in the
16 order that the loans appear in the deck. And we'll start
17 with loan 1955.

18 BY MR. SHUSTER:

19 Q And what I would like you to do, if you would, Mr.
20 Aronoff, is to identify the type of breach and the basis for
21 the breach and the support for the breach.

22 MR. SHUSTER: And what is this, Mr. Lieberman?

23 (Laughter)

24 MR. LIEBERMAN: This is a cover sheet, isn't it?

25 (Pause)

1 THE COURT: So we're on loan 1955 which is about
2 halfway through the binder.

3 MR. SHUSTER: Yes, Your Honor.

4 THE COURT: First page says, loss mitigation input
5 data? The first page other than the one we were just
6 handed, right? No?

7 MR. SHUSTER: Let's see. No. You would have to go
8 back to the previous tab, Your Honor, which is --

9 THE COURT: Oh, the claim --

10 MR. SHUSTER: -- the claim --

11 THE COURT: -- the claim. Okay. Thank you.

12 BY MR. SHUSTER:

13 Q You've got in your book an exhibit that -- TRDX-186 --

14 A Yes. I just want to make sure this is a larger, more
15 readable version of that. Is that what this is?

16 Q That is a larger, more readable version of TRDX-184.

17 A Perfect. Okay.

18 Q But TRDX-186 which is a couple of pages forward is the
19 story the loan tells chart.

20 A I see that.

21 Q Okay. So describe if you would the breach and the
22 evidence supporting the breach.

23 A Sure. The borrower very simply --

24 Q And let me -- I don't mean to interrupt, but I just
25 want to caution you about something you already know, which

1 is to do everything we can to protect borrower privacy. So
2 no last names, no full loan number, that kind of thing. I
3 know you know that.

4 A No. Thank you for the --

5 Q I'm just erring on the --

6 A -- reminder.

7 Q -- side of caution.

8 A Yeah. The borrower's stated income at their job as a
9 government employee that they earned \$10,750 per month. As
10 I discuss this, do you want me to go into the files or just
11 --

12 Q Yes.

13 A -- give the overview?

14 Q Yes. The -- yes. You can turn to page --

15 A Okay.

16 Q -- 16 of 37 in the claims app.

17 (Pause)

18 A Yeah. And you can see page 16 starts the application.
19 The actual income information is on page 17. And I just
20 know that if you flip to page 19 and 18 and the top of page
21 16 there's an application that was signed by the borrower on
22 the end of July 2006.

23 And if you go to page 17 of 37 at the top is the income
24 block where the borrower is supposed to list his or her
25 income. And we see in the base employment income box the

1 monthly figure of 10,750 per month which equates to about
2 \$129,000 a year as I recall.

3 So the evidence for this -- the primary evidence for
4 this claim that was identified in the factual basis for the
5 claim was tax returns for 2006, the same year the loan was
6 originated, and we can flip to that, the claim package at
7 page 21, a few pages later.

8 Q And what does that show?

9 A If you look at wages on line 7 you can see a tax number
10 for that taxable year of 48,602, which equates to a monthly
11 income of 4,050, much lower than 10,750 a month.

12 Now I spoke about this evidence being reviewed in the
13 totality of a file. And I don't know if you want me to get
14 into the rebuttal replies regarding this particular loan,
15 but let's just walk through the storyline and see what we
16 have.

17 In addition to the '06 return, if you go into the loan
18 file at page 344 -- and these are excerpts from a loan file
19 that was about a thousand pages long --

20 THE COURT: What was the page again, Mr. Aronoff?

21 THE WITNESS: 344, I believe.

22 THE COURT: Thank you. In the next tab, right, in
23 the --

24 THE WITNESS: In the next tab that --

25 THE COURT: Yeah. Okay.

1 THE WITNESS: -- that says, loan excerpts. It's
2 right after the tab we were looking at.

3 THE COURT: Okay.

4 THE WITNESS: And they're just excerpts so they
5 don't --

6 (Pause)

7 THE COURT: Oh, I see. Okay. I'm there. Thank
8 you.

9 THE WITNESS: You can see that that is -- I'm not
10 there yet. I thought I was.

11 BY MR. SHUSTER:

12 Q Page 344 --

13 A Yeah. I'm there.

14 Q Okay.

15 A That document is a W-2 for the same year from the
16 employer that shows an income number pretty close to what
17 was reported -- rounded up on the tax return. The tax
18 return says 48,602. This says 48,601.63. So this is
19 confirmation that the number on the tax return, although
20 unsigned and undated, reflects the same number that was
21 reported by the employer on the W-2.

22 Q When you say unsigned and undated are you referring to
23 the tax return?

24 A The '06 tax return. That's correct.

25 Q Does the tax return indicate that it was prepared by a

1 paid preparer?

2 A It does.

3 Q Does that tell you anything?

4 A It -- again, it tells part of the story that -- and the
5 -- we see that that preparer's name appears on subsequent
6 tax returns. So it's -- it would be more difficult to be
7 something that could have been dreamed up by the borrower
8 for purposes of getting the modification they were
9 ultimately trying to achieve.

10 Then the next data point that's important in the
11 analysis here is -- so we have an '06 return and a W-2 for
12 '06. But if we look at -- in the loan file at page 338, I
13 think it's on the other side of the W-2 for '06 we see the
14 '07 tax return, the year subsequent to the year of
15 origination and we see wages of 54,596 and that's important
16 for two purposes.

17 First, it's consistent, although higher, with the
18 income we saw in '06, but you can also note here that it's
19 the same borrower and shows another consistent data point.

20 Similarly for '08 at loan file 447 we have annual
21 income of 58,000 which equates to a monthly income of about
22 4,800 a month.

23 Q Yeah.

24 A And I think most particularly telling in '09 is we have
25 another tax return that's consistent with the \$4,800 a month

1 number that we've been seeing with, you know, some increases
2 in compensation from '06 over '08. But particularly telling
3 in '09, and I refer you to the loan file at page 242, is
4 another -- is that the right cite? I don't know if that
5 cite is right. 242, I'm sorry, where we have a W-2 from
6 2009 which indicates that the borrower is working at the
7 same employer.

8 So any discussion that they may have worked a partial
9 year, been laid off, is somewhat mitigated. One could argue
10 they stopped working in -- after the loan in July of '06 and
11 didn't work again till here. But, again, you look at the
12 totality of the file.

13 And if I might, just on the information relating to
14 '06, even if you assume that on 7/31 when they signed the
15 application they never worked another day in that year, the
16 \$48,000 annual income for that year doesn't jive with
17 someone who earned \$10,750 a month for seven months of the
18 year. That would be well in excess of \$70,000.

19 So, again, a loan --

20 Q Mr. Aronoff --

21 A -- detective would look at all these data points and
22 determine, excuse me, is it more reasonable or not that the
23 750 was a misstatement by the borrower.

24 Q Incidentally, you mentioned that it's the same
25 borrower. Did you happen to check, and we don't have it up

1 -- I don't want to have it up here. But did you check
2 whether the social security numbers match on the tax return
3 and the loan application?

4 A Yes, to the extent that data is available on the
5 supporting document there's -- you know, there -- quite
6 frankly, from time to time in these files there were
7 documents from one borrower in another borrower's file. And
8 every attempt is made to make sure, you know, whether or not
9 a borrower's name may be Joe Smith or Mary Jones, that the
10 information relates to the specific borrower that is the
11 subject of the forensic loan review.

12 Q And here the social security number does match?

13 A They do.

14 Q So you were going to go through, I think, a couple of
15 other documents?

16 A Yeah. If you go to 2010, just to finish the story out.
17 And I might add that much of this documentation was provided
18 by the borrower to Aurora apparently in connection with a
19 number of requests for modification. But, again, in 2010 we
20 have paystubs confirming a fairly consistent number of
21 \$4,600 a month and those paystubs were picked up also, the
22 same source, in what was -- what's called the Aurora wager
23 and are calculated where they made an attempt to calculate
24 the monthly income of the borrower as well based on those
25 paystubs.

1 So this is a fairly straightforward --

2 Q So let's turn --

3 A -- misrep of income refinancing.

4 Q Thank you, sir.

5 So let's turn to TRDX-150 which is the fold out sheet.

6 (Pause)

7 Q So let me direct your attention to the claimant's

8 factual basis. There, it indicates that the -- it -- the

9 2006 tax return was principally relied upon, correct?

10 A Yes.

11 Q Was the other information that you just described and

12 took us through, was that in the materials that was -- were

13 provided to the plan administrator?

14 A Yes.

15 Q And can we look at the plan administrator's response,

16 Mr. Aronoff?

17 A Yeah. Just to get some grounding the top page here

18 that starts with loan number on the far left, that's --

19 Q Yeah.

20 A -- the page I'm looking at, this came from -- all this

21 data on the front and the back, these fields, came from

22 Appendix D to Mr. Grice's reply report. Just to put this in

23 -- there are a lot of these things that look like this

24 flying around.

25 So -- and it simply shows various identifying

1 information about the loan and the breaches, PA's breach ID,
2 trustees' breach number, the trust, the type of defect, the
3 contractual bases for that defect. And as we discussed
4 yesterday you can see it's a misrep. This trust had both
5 the no event of default and a no entry statement rep. So
6 this breach finding
7 resulted in a breach of both of those reps for the same
8 reason.

9 And there is a description we talked about where the
10 borrower stated income as a service worker in a particular
11 type of government program. It states what income they
12 provided in connection with the loan application. And then
13 it states one of the bases which was sufficient by itself in
14 the context of the file to support this breach finding; that
15 there was a tax return, same year, that -- where the
16 borrower was employed by the same employer, the same title
17 as when the loan closed and reflected annual income of a
18 much lower monthly amount.

19 And then we see next to it -- and this was all -- that
20 was submitted under the protocol as --

21 Q Yeah. Yeah. And I don't mean to cut you off. I --

22 A Go ahead.

23 Q -- want you to go on.

24 A Yeah.

25 Q But when you describe the information you said it came

1 from Appendix D to Mr. Grice's reply. But the information
2 that's set forth on page 1 of this exhibit, TRDX-150, was
3 exchanged -- was that exchanged between the parties during
4 the protocol, the page --

5 A Yes.

6 Q -- the page you're looking at?

7 A Yes. All of the columns including the next two, plan
8 administrator formal response and claimant's rebuttal, the
9 trustees' rebuttal, all of that was information exchanged up
10 through step two of the protocol.

11 Q Okay.

12 A This is not information that was generated or written
13 during the -- subsequent to the exchange of expert reports -
14 -

15 Q Okay.

16 A -- which is on the back --

17 Q So let's --

18 A -- of this page.

19 Q -- let's look at the plan administrator's formal
20 response which you would have us to do.

21 A Yeah. The plan administrator's formal response was as
22 follows. The evidence does not support a breach of the no
23 fraud or no event of default representations. The evidence
24 is unreliable and insufficient because income stated in
25 origin year -- origination of the tax return does not prove

1 origination income. And generic statistical salary
2 information, which I don't remember talking about, does not
3 prove origination income.

4 Further, the no fraud representation does not require
5 seller knowledge of which there is no evidence.

6 Further, the evidence does not support a finding that
7 the alleged breach had a material and adverse effect.

8 Q So let's focus initially on the statement about the tax
9 return, "evidence is unreliable and insufficient because
10 income stated in origination year tax return does not prove
11 origination income."

12 What do you understand that to be conveying?

13 A I understood it, when I read this form of response,
14 this is an example of the non-particularized response I
15 referred to earlier. And the understanding -- my
16 understanding of that sentence is that you can't use
17 origination year tax returns to prove origination income
18 which is irrelevant to what was done. We weren't trying to
19 prove origination income in any event.

20 Not to get too technical, but the exercise was to
21 determine whether there was a misrepresentation of income
22 and whether or not it's more likely or not based on the
23 information contained in the file that the income number
24 used, supplied by the borrower in connection with the
25 origination of the loan was mistaken, you know, and met the

1 -- unreliable -- well, this is the -- and met the specific
2 language of the reps -- representations and warranties both
3 in terms of the borrower's covenant under the no default rep
4 and in terms of the sponsor's promise to investors and
5 contained in the no interest statement.

6 Q So --

7 THE COURT: Can I just interrupt because I didn't
8 understand that first distinction that you made, Mr.
9 Aronoff? What's the difference between proving origination
10 income and proving a misrepresentation of origination income
11 embedded in a rep or warranty? Could you explain that?

12 THE WITNESS: Yes. Very simply, the way I look at
13 it is I may not know what their income actually was, but I
14 know their income wasn't 10,750 a month. I know it was
15 nowhere near 10,750 a month. And so it's more likely than
16 not that the 10,750 a month is wrong. Whether they made
17 4,000 a month, 5,000 a month or 2,000 a month, I do know. I
18 don't know that they specifically made 4,827.8 a month, but
19 I know it's more likely than not given the evidence in the
20 file that --

21 THE COURT: Okay. But --

22 THE WITNESS: -- the 10,750 is a misrepresentation.

23 THE COURT: Okay. I take your point. But the
24 underlying -- all of this is about determining what the
25 borrower's income was or was not. It's -- if it was one

1 thing it was not another thing. I -- you seem to be placing
2 emphasis on this point and I -- I understand exactly what
3 you're saying; that the exercise was, from your perspective,
4 to demonstrate that the income was not \$10,000 a month,
5 right? But implicit in that is two halves of a whole. If
6 it's not one thing -- if it is one thing then it's not the
7 other thing.

8 THE WITNESS: I have to agree with you.

9 THE COURT: Okay.

10 THE WITNESS: But --

11 THE COURT: No. You don't have to.

12 THE WITNESS: But -- no. But -- well, what you
13 said was logically correct.

14 THE COURT: Is logically correct, right?

15 THE WITNESS: But the -- that was a part of the
16 exercise. And the ultimate goal is to see if the rep has
17 been breached; that is, is there a misrepresentation --

18 THE COURT: Yes.

19 THE WITNESS: -- of income.

20 THE COURT: Right. But --

21 THE WITNESS: And, again, in order to achieve that
22 in many cases given the state of the files you can't with
23 certainty say, here's what they made so 10,750 is wrong.
24 What you can do is say, given this information it's more
25 likely than not that this number couldn't have been true.

1 But you don't know with perfect certainty.

2 Again, just the math you do to say, well, if they
3 made 10,750 a month and lost their job in July, they would
4 have made --

5 THE COURT: I get --

6 THE WITNESS: -- so --

7 THE COURT: I get --

8 THE WITNESS: -- so --

9 THE COURT: I get all of that. I'm just really --

10 THE WITNESS: -- that's the analysis.

11 THE COURT: -- I'm just parsing the English words
12 and I -- I don't think -- I agree with your formulation.
13 Might the plan administrator have used better, more accurate
14 words in their response, I mean, they can ask a question to
15 indicate to me whether they meant something other than what
16 you and I are talking about right now, whether it simply
17 means does not prove -- well --

18 THE WITNESS: I --

19 THE COURT: I think we're understanding each other.

20 At least I think I'm understanding what you're saying.

21 MR. SHUSTER: Let me ask you -- thank you, Your
22 Honor.

23 THE COURT: Okay.

24 BY MR. SHUSTER:

25 Q Let me ask you this, Mr. Aronoff. Did you understand

1 the plan administrator by its response to be rejecting the
2 use of same year tax returns to establish a income
3 misrepresentation breach, period?

4 A I did and that initial understanding was supported by
5 the types of criticisms that were put forth in the Grice
6 reports.

7 Q So let me -- let's just talk about there's a reference
8 in the plan administrator's response to statistical salary
9 information. That wasn't identified as a factual basis in
10 the claimant's factual basis. But let me direct your
11 attention to the claim tab and more specifically to page 32
12 of 37 there.

13 (Pause)

14 A Yes.

15 Q And what is that, Mr. Aronoff?

16 A This is the form of printout that's typically provided
17 in connection with a BLS, use of BLS.

18 Q Okay. Now -- but this wasn't put forward here, at
19 least in the claimant's -- you didn't cite to it in the
20 claimant's factual basis, right?

21 A We didn't cite to it, but it was included in the claim
22 package because, again, it wasn't the primary source, but
23 yet another data point was to look at this information at
24 the ninetieth percentile and show that this number is still
25 out of line with \$130,000 a year for this location, for this

1 time.

2 Now the reason it wasn't cited is this is a very
3 particular type of job, a government social worker in
4 essence when you do the research for a governmental agency,
5 and, you know, I think in QC-2 this was interesting, but
6 this wasn't put forth due to the potential difficulty in
7 understanding whether this particular description was
8 directly applicable to or meaningfully applicable to our
9 specific borrower.

10 Q Okay. So let's go back to -- thank you -- to TRDX-150.

11 A Yeah.

12 Q So in the plan administrator's formal response there's
13 no reference to the other documents that you identified that
14 are corroborative in your view and that were contained in
15 the materials provided to the plan administrator, correct?

16 A That's correct.

17 Q And then did the plan administrator here assert that
18 there wasn't a 2006 tax return or that -- and that it didn't
19 say what the claimants -- the trustees say it said.

20 A No. They don't assert that.

21 Q When it came to the breach types that were predicated
22 on borrower misstatements or omissions, income, debt,
23 occupancy, do you recall in any general way how frequently
24 the plan administrator did assert that the evidence that the
25 trustees were relying upon wasn't, in fact, in the file or

1 didn't say what it said?

2 A It was the -- again, the number of incidents of what I
3 considered particularized responses was very, very small.

4 Q Okay.

5 (Pause)

6 Q So -- just so we complete this loan, there's a
7 claimant's rebuttal --

8 A Yes.

9 Q -- and in the claimant's rebuttal -- well, why don't
10 you take us --

11 A Yeah.

12 Q -- through what --

13 A And I'll read it. But --

14 Q -- what's going on there.

15 A But this was viewed as, to the extent a response was
16 offered, to explain why the claim was to be continued with
17 under the protocol. There was an attempt to respond however
18 general to the formal response of the PA.

19 Q So --

20 A And there were a number of pieces to it, so we tried to
21 respond to each --

22 Q Okay.

23 A -- of those pieces.

24 Q So just so we can move through it quickly --

25 A Yes.

1 Q -- the -- there was a response to the statement that
2 they -- that the evidence doesn't support a breach, right?

3 A Yes.

4 Q There was a response to the statement that seller
5 knowledge is required under the no untrue statement rep --

6 A That's correct.

7 Q -- right?

8 A Yes.

9 Q There was a statement that the trustees believed they
10 provided sufficient documentation to support the breach, and
11 that the breach materially and adversely effected the value
12 of the loan, correct?

13 A Yes.

14 Q And then there was a statement where the trustees
15 disagree with the position that the plan administrator takes
16 on what is required to establish a material and adverse
17 effect?

18 A Yes. That's correct.

19 Q So let's just go to the other side, and I just wanted
20 to go through that quickly in the interest of time.

21 MR. SHUSTER: Your Honor, I note it's past 3:30.

22 THE COURT: Yeah. Someone's going to open that
23 door to get me when my call comes through. So you can keep
24 going.

25 MR. SHUSTER: Okay.

1 THE COURT: Thank you --

2 MR. SHUSTER: Thank you.

3 THE COURT: -- for noticing the time, though.

4 BY MR. SHUSTER:

5 Q Okay. So then we have the Aronoff rebuttal reference
6 to source documents, additional breach, the Grice review
7 narrative. So what came in which order here to the extent
8 you can recall?

9 A Okay. That's a more difficult question than --

10 Q Well, I can ask you a simpler --

11 A No. No. No. What -- I think the sequence of events,
12 this was in his reply brief, reply report which was the --

13 Q You mean --

14 A -- last --

15 Q You mean Mr. Grice?

16 A -- of the three. Mr. Grice's. In my rebuttal report
17 I responded to those loans, exemplars in Mr. Grice's
18 affirmative report as to which he agreed with the plan
19 administrator which was all the information we got, that I
20 saw in connection with Mr. Grice's affirmative report. He
21 cited the information on the first page we looked at and
22 agreed with the plan administrator or referred it for
23 additional information. I don't recall one incidence where
24 he actually agreed with the trustees, which was interesting
25 in and of itself to me.

1 And so in my rebuttal report, to the extent Mr. Grice
2 agreed with the plan administrator, I provided a rebuttal.
3 And that's what's listed here in my rebuttal report in an
4 exhibit.

5 The second column, source documents Bates numbers, that
6 came from Mr. Grice about -- my understanding is about five
7 weeks after the affirmative report when the request was
8 made, I would assume by counsel, I don't know, to provide
9 the information on which Mr. Grice relied to reach his
10 conclusion that he agreed with the plan administrator.

11 And so some weeks later this source document
12 information came, and what we endeavored to do was open the
13 file, look at that source documentation, guess what he meant
14 the best we could, that -- why he used those documents as
15 the basis for his agreement with the statements we had
16 earlier, and create a rebuttal around the -- those
17 documents.

18 THE COURT: I -- there's a -- so I'm -- I was with
19 -- so the order was -- just looking on the second page of
20 TRDX-150, the Grice review narrative came first, just on the
21 side of the document, right? The Grice review narrative
22 came first, right?

23 THE WITNESS: No.

24 THE COURT: No? Just on this side of the document.

25 MR. SHUSTER: Yes. So --

1 THE COURT: And -- no?

2 MR. SHUSTER: No. I -- well, let -- we'll go
3 through -- let me go through it and I think we can get it
4 out.

5 BY MR. SHUSTER:

6 Q Mr. Aronoff, on this page --

7 THE COURT: On this page.

8 Q -- the Grice -- was the first thing that came the Grice
9 --

10 THE COURT: Right.

11 Q -- review conclusion?

12 A The last Column O was the only thing we had. That came
13 first in Mr. Grice's affirmative report.

14 Q The June 1 report?

15 A Correct.

16 Q So there was the information on page one of TRDX-150
17 plus that?

18 A With respect to --

19 THE COURT: Okay.

20 THE WITNESS: -- specific loans --

21 THE COURT: Okay.

22 THE WITNESS: -- that he talked about.

23 THE COURT: And along with the Grice review
24 conclusion was the next -- was Column N, the Grice review
25 documents relied upon, yes or no? No?

1 THE WITNESS: Column K. Sorry.

2 THE COURT: Column K?

3 MR. SHUSTER: No.

4 THE COURT: No.

5 BY MR. SHUSTER:

6 Q Do you recall that sub -- that subsequent to the
7 submission of Mr. Grice's report -- you mentioned
8 approximately five weeks subsequent to the submission of the
9 affirmative report Mr. Grice provided Bates numbers that he
10 -- to identifying documents he relied upon?

11 A Right. And my understanding --

12 Q Is that Column --

13 A -- his --

14 Q -- N?

15 A I thought it was K. It could be N. One of these is
16 his source documents for his narrative which accompanied the
17 reply report, and one of these is the dump of just Bates
18 numbers that we received five weeks after the -- it could be
19 K or N. I'm sorry. This is his -- his appendix. I know --
20 I know that my rebuttal was constructed based simply on the
21 provision of Bates numbers with respect to this loan.

22 Q So that -- that's -- so let's get to that step in the
23 sequence. There was the initial June 1 affirmative report
24 from Mr. Grice, right?

25 A Correct.

1 Q There was the submission of Bates numbers identifying
2 documents he relied upon pursuant to the request of counsel
3 roughly five weeks later --

4 A Correct.

5 Q -- right? You provided in your rebuttal report a
6 rebuttal narrative based on Mr. Grice's review conclusion
7 and Bates numbers, correct?

8 A Correct.

9 Q Mr. Grice's review narrative, the Grice review
10 narrative in Column M didn't actually come until after the
11 reply reports were exchanged, correct?

12 A Yeah. I think it was September 1st.

13 Q And the reply reports were exchanged on or about August
14 27?

15 A That's my recollection.

16 Q All right.

17 THE COURT: So to put a fine point on it and then I
18 think I'm going to have to stop for a moment. You, Mr.
19 Aronoff, you have not had an occasion to respond to what's
20 in Column M here, the Grice review narrative?

21 THE WITNESS: That's correct.

22 THE COURT: All right. Okay.

23 Could we take a brief --

24 MR. SHUSTER: Of course.

25 THE COURT: -- pause and let me try to jump on this

1 call and then I'll get back. Ten minutes.

2 MR. SHUSTER: Thank you, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. COSENZA: Thank you, Your Honor.

5 (Recessed at 3:40 p.m.; reconvened at 4:02 p.m.)

6 THE COURT: I apologize. Just a little emergency
7 that had to be dealt with. So we can -- let's resume. But
8 thank you. I really apologize for keeping you waiting.

9 MR. SHUSTER: Thank you, Your Honor.

10 THE COURT: Okay.

11 BY MR. SHUSTER:

12 Q Mr. Aronoff, let's continue if we could with TRDX-150.
13 So we went through the sequence of events as it were. So
14 let's -- why don't you look at the Grice review narrative
15 column and provide your response, whether it's -- whether
16 you're relying upon the Aronoff rebuttal or otherwise.

17 A Okay. Now the Aronoff rebuttal preceded the Grice
18 narrative, so --

19 Q Understood.

20 A -- there's -- there -- let me just read his narrative
21 for a second.

22 (Pause)

23 A Okay. I -- I think the quickest way to do it is just
24 point by point to go through the five or six statements in
25 the narrative related to this loan which the first is that

1 the loan approval in file, and I don't necessarily know that
2 we have these documents in the binder. But there is a
3 reference to a satisfied condition that requested a
4 narrative from the borrower describing her employment
5 responsibilities. I don't know how that's relevant to the
6 analysis that was completed.

7 I do know that at some point between receipt of this
8 and my sitting here today I looked at this information to
9 see if it changed my opinion with respect to this loan at
10 all, and that document did not change my opinion.

11 THE COURT: Can you tell me, Mr. Aronoff, if you
12 recall what that document said just out of curiosity?

13 THE WITNESS: I don't recall, but I think given the
14 unique title in the unredacted version I think there was
15 probably in connection with the origination of the loan, the
16 loan underwriter requested, well, what is that, what is --

17 THE COURT: I see.

18 THE WITNESS: -- that job, what do you do, what are
19 your responsibilities so they could put it in the context of
20 their understanding --

21 THE COURT: I see.

22 THE WITNESS: -- of what someone in that position
23 did.

24 THE COURT: Okay. Thank you.

25 THE WITNESS: And the -- and he says, the borrower

1 provided that letter of explanation regarding her many
2 responsibilities for the unnamed employer --

3 THE COURT: Thank you.

4 THE WITNESS: -- is what it is.

5 He goes on to say that the 2006 tax returns were
6 incomplete and unsigned. Well, we talked about that and we
7 talked about why that, though considered, was not
8 dispositive with respect to the '06 returns in our view.

9 BY MR. SHUSTER:

10 Q So the '06 return as we looked at indicated that it was
11 prepared by a paid preparer, if you recall?

12 A Yes.

13 Q And what does that tell you about the return?

14 A Well, it was the same preparer that prepared all the
15 other ones. So in my experience it's not uncommon for the
16 file copy of a tax return retained by a borrower to not be
17 signed. But, you know, that -- that's still -- whether or
18 not that's true and whether or not that's my experience, I
19 think the more telling information here was we had a W-2 for
20 the same year corroborating the income number on that tax
21 return. We had other tax returns prepared by that preparer.
22 We had subsequent tax returns showing that the borrower is
23 in the same job for the same year. And those facts cast in
24 that light demonstrated that the '06 return was reliable.

25 Q Were people e-filing? Was e-filing of tax returns

1 available at that time?

2 A I'm -- I have no -- that's way outside my depth.

3 Q Okay.

4 A I don't know.

5 Q All right. Okay.

6 A Just to continue because there was a broad statement
7 about the tax return. Then apparently there's a concern
8 that they didn't represent the final tax return. They
9 reported an annual number, didn't -- you know, we couldn't
10 tell if it was full-time or unpaid. We talked about those
11 issues, too, as part of the analysis.

12 So the speculation, although perhaps on point in the
13 context of this file, just are shown to be not a concern.
14 And --

15 Q Well, and I just want to focus for a second on the fact
16 that the statement by Mr. Grice that the tax returns do not
17 indicate if the borrower was full-time for the year or had
18 periods of unpaid leave.

19 First, is there any -- did you see any evidence in the
20 file that suggested that those were the circumstances, that
21 the borrower didn't work a full year or had periods of
22 unpaid leave?

23 A There was no indication to that at all in the file.

24 Q And --

25 A And there was actually indication, as I pointed out in

1 subsequent tax return years and in other information in the
2 file that that was not the case. The borrower had what
3 appeared to be continued employment in the same position
4 with the same employer.

5 Q Okay. So is there anything else you want to add about
6 Mr. Grice's narrative before we move on?

7 A I don't think so.

8 Q So I just want to direct your attention, Mr. Aronoff,
9 if I may to the Column N, Grice review documents relied
10 upon.

11 A Yes.

12 Q So were these the Bates citations that were provided
13 five weeks after the original submission of his expert
14 report?

15 A I don't think so. You guys can correct me. But if you
16 look at the Grice review narrative --

17 Q Yeah.

18 A -- the first document is a letter of explanation which
19 is the first sentence of his narrative. The second is the
20 '06 tax returns. I believe that the Column N was provided
21 five weeks later, but I could be wrong.

22 Q No. That's the one I was asking you about.

23 A Oh, K.

24 Q Column N.

25 A No.

1 Q Column N.

2 A Okay.

3 Q Look, let me just -- look, it says Grice review

4 documents relied upon.

5 A Right.

6 Q And then it points to the loan approval, right --

7 A Yes.

8 Q -- which is referenced in his narrative?

9 A Right.

10 Q Then it references the letter of explanation which is

11 referenced in his narrative, right?

12 A Right.

13 Q And then it references the 2006 tax returns which is

14 referenced in his narrative, right?

15 A Yes.

16 Q And then the Bureau of Labor statistics which is

17 referenced in his narrative?

18 A Right. And his narrative came on 9/1 --

19 Q Yeah.

20 A -- and I believe the documents in N accompanied that.

21 Q Okay. The -- okay. You don't recall --

22 A And I think --

23 Q -- that the documents -- the document citations in

24 Column N were the ones that came five weeks after the

25 submission of his report?

1 A I don't recall. I thought in looking at this again
2 that the documents he provided without any explanation five
3 weeks later to support his conclusion were the documents
4 listed in Column K.

5 Q Mr. Aronoff, in the Column N Grice review documents
6 relied upon did he cite to any evidence that contradicted or
7 refuted the evidence that the trustees put forward?

8 A Not in my view.

9 Q Okay. Let's move on to loan 2979. It should come
10 right after this loan in the binder.

11 (Pause)

12 Q You've also got a story the loan tells chart which is
13 TRDX-187 should you wish to consult it.

14 A Okay. Yeah. In terms of referring to the documents
15 that were the supporting --

16 Q Right.

17 A -- evidence for the story I think it's important.

18 Q Do you recall that this, before we get in to heavily
19 into this loan that this was a exemplar loan put forward by
20 Mr. Grice?

21 A Yes.

22 Q Okay. So take us through it, please, when you're
23 ready.

24 A All right. This is a variation on the theme of the
25 prior loan. It is a misrepresentation of income. A little

1 more complicated analysis here because this borrower was
2 self-employed as opposed to a salaried worker; that is, we
3 don't have the benefit of W-2s, but we do have three years
4 of tax returns where, as I said, again, although the
5 calculation of income is a little more complicated, in each
6 case we gave the borrower credit for wage income as the
7 owner of the company, gave the benefit for the business
8 income as the owner of the company, and then added back in
9 depreciation because that could have represented available
10 cash that they had for that year, but for an -- for
11 accounting purposes was deducted from their taxable income.

12 So it was more conservative and consistent with
13 industry custom and practice when you have a borrower of
14 this employment type to give them credit for any
15 depreciation.

16 Q You recall that Mr. Grice, and we'll get into each of
17 these columns, but that Mr. Grice testified about this loan
18 on his direct examination and opined that he thought it was
19 odd to add depreciation back into income? Do you recall
20 that?

21 A Not specifically.

22 Q Okay. Well, regardless of that, did you think it was
23 appropriate to add depreciation back in, and if so, why?

24 A As I said it -- it is the standard way in which
25 analysis for this type of borrower is done, and I think it

1 is also cast -- doesn't attempt to simply take a net income
2 number, a taxable income number, divide it by 12 and try and
3 find a breach. It tries to represent the actual in
4 composition of the borrower giving them credit back for
5 merely an accounting deduction from that income.

6 Q Okay. So I want to -- we see in the claimant's factual
7 basis column the description of the claim, correct, on page
8 -- I guess it's page 18 of TRDX-160.

9 A Yes.

10 Q I'm not sure why it's not page 1, but it's not. I
11 think -- so in any event there is a description of the claim
12 and it -- it states that the claim is predicated or the
13 misrepresentation of income breach assertion is predicated
14 on a same year tax return, right?

15 A Correct.

16 Q And then I just want to focus you on the plan
17 administrator's formal response, the -- this -- the third
18 sentence beginning, additionally: "Additionally, the
19 evidence is unreliable and insufficient because income
20 stated in the origination year tax return was not proved
21 origination income."

22 Do you see that?

23 A I do.

24 Q So what did you understand that to be conveying?

25 A The same thing as in the prior one which since this was

1 not a statement that I'm unfamiliar with, given it was
2 repeated thousands of times in the rebuttals and then at the
3 time I thought it meant that tax return wasn't a basis for
4 this claim. It was unreliable and insufficient for reasons
5 that were not stated in this response.

6 And, again --

7 Q And --

8 A -- and that understanding was supported by the
9 discussion as to the unreliability of tax returns in
10 addition to other forms of support that were used in the
11 review and Mr. Grice's reports.

12 Q Did you believe during the protocol and do you believe
13 now that it's incorrect to assert that tax return documents
14 cannot be used to establish a breach, same year tax returns
15 can't be used to establish an income representation breach?

16 A I disagree with that.

17 Q So let's look to -- initially why don't we look to the
18 tax return.

19 A Okay. If we go to the claim package.

20 Q This -- you know what? We should just start with the
21 loan application so we orient ourselves as to the borrower
22 and the number. So that's at page 7 as your exhibit
23 indicates, TRDX-187.

24 A I'm not even in the right tab. Just give me a second.

25 (Pause)

1 A Yes. If we go to the claim package and we go to page 7
2 that's the beginning of the application which runs some five
3 pages, signed September, end of September '06. And we see
4 on page 8 of 30 in the claim package -- well, first, let me
5 point out on the application on page 7 where -- I don't see
6 it.

7 (Pause)

8 A If you look at the last box on the left-hand side where
9 the company is listed he checked the self-employed box.
10 That would indicate to a loan reviewer he's not a wage
11 earner, probably a more complex analysis of income and go
12 down that path with respect to this borrower.

13 So we see in the monthly income box all that this
14 borrower stated was base employment. So, you know, that is
15 another indicator to the loan reviewer in the first instance
16 as to what types of income they should be looking for and
17 looking at.

18 And if we go to the claim package a few documents
19 later, pages later at page 12, we see the '06 return. We
20 see business income on line 12 of 26,595.

21 Q I notice there's a type-written note in the sort of
22 several lines below that number.

23 A Oh, yeah. Okay. This was an annotation by the loan
24 review firm to help anyone looking at the file to understand
25 how the income was calculated and it mirrors what's on the

1 story where the loan reviewer noted that I have this 26,595
2 of business income for this taxable year, but please refer
3 to Schedule C on page 15 of 30, the bottom, and they boxed
4 that number to check and see if it was the same.

5 And then they also showed that they added back in the
6 depreciation number in order to attain the monthly income
7 calculation of almost \$4,000 based on the sum of the
8 business income, the depreciation resulting in about 48,000
9 annually that resulted in the monthly income of 4,000.

10 Again, simply comparing that to the almost 8,000 that
11 was stated in the same year started to tell a story about
12 whether or not that income was misstated or not.

13 Q Now I just want to stop for a second on that
14 depreciation, Mr. Aronoff, okay? So can we just stay there?

15 A We can.

16 Q So there's a gross income number and then the borrower
17 indicates a deduction for depreciation, correct?

18 A Yes.

19 Q You with me?

20 A Yes.

21 Q Okay. So that deduction is 21,361. So is this
22 depreciation a cash expense?

23 A No. It's an accounting entry.

24 Q And then that results in a net taxable income number,
25 correct?

1 A A reduced taxable -- net taxable income number.

2 Correct.

3 Q And so then why did the trustees in their loan review,
4 why did they add back in that number in order to provide --
5 why did they take care to add back in that number in order
6 to arrive at a income number for the year to compare to the
7 income number stated on the loan application?

8 A To attempt to create as best as possible a gross annual
9 income number which would result in a gross monthly income
10 number before the deduction of, you know, accounting entries
11 like depreciation.

12 Q So had the depreciation not -- had the trustees not
13 taken care to add the depreciation number back in would the
14 income number that they used to compare it to the income
15 number on the loan application been inappropriately low?

16 A Yeah, by almost half.

17 Q So that's why they added it back in, the loan reviewer?

18 A They did it and the industry does it in this manner for
19 the reasons I just discussed.

20 Q Okay.

21 A It would have been inappropriate to try and come up
22 with the lowest possible number one could based on the tax
23 returns and use that as the basis for a breach claim.

24 Q Okay. So let's --

25 THE COURT: Could we pause on this?

1 MR. SHUSTER: Please.

2 THE COURT: What could be more interesting than
3 looking through tax returns?

4 MR. SHUSTER: Indeed.

5 (Laughter)

6 THE COURT: So these are questions. Now let me
7 find where it is.

8 So, Mr. Aronoff, I know you're not a tax lawyer or
9 tax accountant, but --

10 THE WITNESS: Thank you for --

11 THE COURT: -- you've obviously read --

12 THE WITNESS: -- prefacing it.

13 THE COURT: -- you've obviously read a lot of tax
14 returns. So if we look at page 12 of 30 which is the first
15 page of the '06 1040, in the income block so to speak
16 there's a box around the 26,595 number as the business
17 income or loss, right?

18 THE WITNESS: Yes.

19 THE COURT: Okay. And then below that box there's
20 a negative 13,999, right?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And that's Form 4797 so we can
23 look at that. And then on 16-A there's -- that appears to
24 be taxable pensions and annuities, right?

25 THE WITNESS: Yes.

1 THE COURT: Okay. So we don't know what that is or
2 what the borrower was thinking about with respect to that
3 number, right? I mean, let me state it differently. The
4 analysis that you -- that Mr. Shuster is taking with you now
5 is keyed off of the 26,595 number with the depreciation put
6 back in and then multiplied, right? That --

7 THE WITNESS: That --

8 THE COURT: That's the formula, right?

9 THE WITNESS: Yes, Your Honor. That's --

10 THE COURT: Okay.

11 THE WITNESS: -- correct.

12 THE COURT: So now if you turn to not mysterious
13 Form 4797, but Schedule C, property or loss from business
14 which is at page 15 of 30 there's a box that says, income,
15 and in line 1 is reported the number 146,588, right?

16 THE WITNESS: Yes.

17 THE COURT: And then we have cost of goods sold and
18 we get gross profit. And then our friend the depreciation
19 seems to come in. And then you get down to the 26,595,
20 right?

21 THE WITNESS: Correct.

22 THE COURT: Okay. So we don't know, as you've
23 emphasized we don't know actually what happened at
24 origination, whether this person misrepresented,
25 misunderstood, we don't know, right? I mean, I follow your

1 math. I have no question about your math. But in terms of
2 what the entirety of the tax return shows we just -- we
3 don't know if this was a bad, intentionally misrepresenting
4 borrower or a borrower who misunderstood or a borrower who
5 just thought that when the form said income it was related
6 to the income number on this Schedule C. I'm just asking.
7 I have --

8 THE WITNESS: No. You're absolutely correct.

9 THE COURT: I mean, we just --

10 THE WITNESS: But what we can assume that led to
11 our conclusion is that \$8,000 a month or thereabouts was
12 represented as being indicative of the borrower's capacity
13 to pay the loan back. It was used as the basis for the
14 underwriting decision. There's no other information in the
15 file.

16 THE COURT: Right.

17 THE WITNESS: And upon a review of the '06, '07 and
18 '08 tax returns, reading those in the light of an owner of a
19 company as a gross income amount, but pays tax on the amount
20 that's available to pay back the loan after adding back in
21 depreciation -- because all the other deductions from the
22 numbers you talk about are really expenses related to the
23 business that would result in this bottom line number.

24 And so the analysis is really what is the number
25 that it appears accurately represented that borrower's

1 capacity to pay. But we don't know, you're absolutely
2 right, with any certainty. These are assessments based on
3 the files.

4 THE COURT: Snowflake?

5 THE WITNESS: They're not -- oh, the analysis is
6 based on that snowflake. But to the extent an identify -- a
7 misrepresentation of income is discovered, those breach
8 findings can be treated in this way.

9 THE COURT: Thank you.

10 BY MR. SHUSTER:

11 Q Well, why don't you take us through, Mr. Aronoff, the
12 other evidence that you've identified that in your view
13 corroborates the breach finding?

14 A Again, we have the benefit of '07 and '08 returns that
15 when -- in the loan file that was provided in connection
16 with the breach claim that corroborate the calculations and
17 the monthly income that result from those calculations in
18 subsequent years.

19 Q Okay. So let me direct your attention to a couple of
20 things here. Let's go back to the loan application. What -
21 - what is the date that the loan application was signed?

22 A September 29th, 2006.

23 Q Okay. So if the borrower had been earning \$8,000 a
24 month through that date that would be nine months. That
25 would be what number?

1 A \$72,000.

2 Q Okay. And how does that compare to the information
3 that we have for the tax return that is complete through to
4 the end of the year?

5 A Well, we have a tax return that shows their income for
6 the year. There's nowhere on the tax return that
7 necessarily shows how many months they worked that year.

8 Q No. No. But I'm saying the income for the year
9 reflected on the tax return with the analysis that you did -
10 -

11 A Oh, not even close to 72,000, must lower.

12 Q 47,956.

13 A After doing the calculation we talked about. Yes.

14 Q Okay. And if you took the 7,996 number which is, call
15 that \$8,000 and you project that out for 12 months, so what
16 does that come to?

17 A It comes to \$96,000.

18 Q Right. Can you look at the tax return and figure out a
19 way to get to \$96,000 from the information that is set forth
20 on the tax return?

21 A No. Again, and as we discussed with the first loan,
22 those are the kinds of, you know, boxing in the analysis
23 that a loan reviewer would do to see if it's more likely
24 than not that the income, although not known as Your Honor
25 pointed out, is more likely -- has more likely than not been

1 misstated.

2 Q Now let's now look at the Grice -- Mr. Grice's
3 rebuttal.

4 (Pause)

5 Q And I want to direct your attention to the third
6 paragraph, and specifically the second sentence. Are you
7 with me?

8 A Yes.

9 Q So first of all, Mr. Grice isn't disputing that the tax
10 return or any of the other information is in the file or
11 that it says what it says, is he?

12 A Let me just read the paragraphs you didn't point my
13 attention to. No, he does not.

14 Q And he points to the gross income number on the tax
15 return. Do you see that, 68,141?

16 A Yes.

17 Q And that also, if you divide that by 12 you don't get
18 \$8,000, do you?

19 A No, you don't.

20 Q You get something like five and a half thousand or
21 something?

22 A Somewhere between eight and four.

23 Q Right.

24 A Closer to four.

25 Q And then he mentions that the borrower was the owner of

1 a heating and air conditioning company that was subject to
2 seasonal fluctuations based on weather temperatures,
3 construction startups, remodeling and needed repairs by
4 clients. Do you see that?

5 A I do.

6 Q Does he point to any specific information in the file
7 that supports those assertions?

8 A No, he does not.

9 Q He -- HVAC by the way as he points out is heating and
10 air conditioning, right?

11 A Heating, ventilation and air conditioning.

12 Q So cold weather, hot weather?

13 A HVAC, yes.

14 Q Right. And then he says that the subject transaction
15 was closed on or before the onset of the mortgage crisis and
16 borrowers' employed in many occupations, including retail
17 and real estate construction related professions experienced
18 dramatic losses in income. Do you see that?

19 A I do.

20 Q He doesn't -- so apart from making that macroeconomic
21 observation does he point to any information that's specific
22 to this borrower?

23 A No.

24 Q Now he says that -- so he's suggesting -- do you
25 understand him to be suggesting that the borrower may have

1 experienced a dramatic loss in income in '06?

2 A He doesn't specifically say that, but I think he was
3 offering some reasons why he may have made \$8,000 in
4 September and made a much lower income than 12 times 8,000
5 for the whole year --

6 Q So --

7 A -- without any basis in any facts in the file.

8 Q Let me direct your attention -- give me one moment, if
9 you would.

10 MR. SHUSTER: May I have a moment?

11 (Pause)

12 BY MR. SHUSTER:

13 Q There is a -- let me direct your attention to -- and,
14 you know, what we're talking about, again, the loan closed
15 end of September of '06. So we would be talking about three
16 months, right, if --

17 A Three months left in the year? Yes.

18 Q Yeah. There -- is there any -- there's a hardship
19 description in the file and I want to point you to page 378.

20 (Pause)

21 A Uh-huh.

22 Q So what does that indicate?

23 A Well, this can give some context. Again, like most of
24 the information in these files this is not dispositive, but
25 it gives another important indication. This was the

1 borrower's financial statement apparently provided to Aurora
2 some time in 2009 where the borrower is discussing that they
3 had lost time and income to the business due to some medical
4 issues this borrower had within the past year, and also
5 mentions also slowed down due to economy, which, again, more
6 likely than not pertains to the '08-'09 time period and
7 there's no reference to any effect on his business prior to
8 the last year when he's also commenting on this medical
9 condition.

10 So that was read to mean that, yes, this borrower had
11 slow down in the business, but it was unlikely that that
12 slow down related to '06 or '07 and probably related to
13 subsequent years when he apparently ran into some
14 difficulties in paying the loan.

15 MR. SHUSTER: So I've -- I'm at the point where I
16 would start another loan and my question is whether it's --

17 THE COURT: I'm good if you're good. It's up to
18 you folks.

19 THE WITNESS: This is what I do.

20 (Laughter)

21 THE COURT: Me, too.

22 MR. SHUSTER: As of now at least. Okay. So let us
23 try another then.

24 BY MR. SHUSTER:

25 Q Mr. Aronoff --

1 THE COURT: Mr. Shuster is having a hard time
2 containing himself he's having such a good time.

3 MR. SHUSTER: Yes. I'm so excited.

4 (Laughter)

5 BY MR. SHUSTER:

6 Q So loan number 9621 if we could, please.

7 (Pause)

8 Q And again you've got your -- in your deck you've got
9 your extracts from the Grice report. You've got a highlight
10 of the information submitted --

11 A Yes.

12 Q -- and you've got a story the loan tells chart.

13 (Pause)

14 MR. SHUSTER: Did you hear that?

15 THE COURT: No. What was that? I missed it.

16 MR. SHUSTER: I said I don't know if I -- I was
17 asking them what I just said about which loan we're
18 covering.

19 Okay. Here we are.

20 BY MR. SHUSTER:

21 Q When you're ready I'll ask you to walk us through the
22 basics, please.

23 A Sure. I guess the best place to start is with the
24 claimant's factual basis. This is a borrower that stated
25 \$12,000 a month on the loan application, and we find that on

1 page 17 of the claim package. Now we see this happens to be
2 an application that's dated and signed at the end of
3 December in it looks like '04. I think that's correct.

4 Q Yeah. You -- if you look on page 18 and then 19 --

5 A Yeah.

6 Q -- it's a little clearer on 19.

7 A Yes. Yes. And we see on the first page of the
8 application on page 16 that this borrower is a self-employed
9 realtor with three years on the job which would have been a
10 somewhat red flag at the beginning as to how someone that
11 inexperienced could earn this much money. But that's just
12 me looking at the file.

13 Q So three years on the job, five years in this field.

14 A Similarly, that's -- that's a lot of money as a real
15 estate broker. But, in any event, there were '05 and '06
16 tax returns in the file which were considered in the context
17 of the whole file to see if this borrower had misrepresented
18 the income that was shown at the end of '04. And we see in
19 a review of the '05 tax returns which were viewed as
20 reliable because although this was a self-employed borrower
21 they were in the same profession working for the same real
22 estate company as an agent.

23 So here we have a self-employed borrower that may not
24 have exactly the same features as say an owner of a company,
25 but for lack of a better term, more of a 1099 employee

1 acting in a position where to the extent they're in the same
2 location with the same company as an agent that should
3 provide some level of confidence that you're looking at a
4 similar situation.

5 Now that's not to say that a real estate broker's
6 income can't vary from year to year, much more -- in a much
7 greater fashion, be much more volatile than some other
8 professions. So you have to look at the level and the
9 amount of difference here which is not insignificant.

10 Q So when you make reference and I -- I don't mean to be
11 cutting you off.

12 A No.

13 Q When you make reference to the '05 tax return can I
14 direct your attention to page 20 of --

15 A Yes. That's where I was going. Yeah.

16 Q Thank you. So forgive me for interjecting. Please
17 continue.

18 A No. You see business income of 23,000 which reflects a
19 -- as it says on the thing a monthly income a monthly income
20 of less than \$2,000 a month.

21 We also see, and I note and we don't know for certain,
22 but we also see in line 21 a net operating loss carryover to
23 2005 of about \$15,000 which indicates at some point in time
24 this borrower had no income and had negative income and was
25 trying to get the benefits of that in this subsequent tax

1 year.

2 Similarly, when we look at '06 we see a monthly income
3 consistent with the '05 income and this required a little
4 math and this was brought to light, I believe, by Mr. Grice
5 who I think if we look we can find it in the Grice response.
6 As I recall Mr. Grice looks at the '06 income and says, this
7 borrower made \$108,000 in '06. That's pretty close to 144
8 in '04, so it just --

9 Q Well, let's stop there for a second.

10 A Okay.

11 Q How close is 106 (sic) to 144?

12 A 108 to 144, well, it's different, but he uses this to
13 point out, I think, in addition to the fact that '05 was an
14 anomaly and we had 23,000 in '05, but we had 108 and change
15 in '06 and 144 in '07 -- in '04, I'm sorry, I think he tries
16 to call into question the use of '05 as a tax year and point
17 to maybe why did we say that the borrower only made \$13,000
18 in '06 when it's clear they made \$108,000.

19 Q Right. So the -- let's look at the '06 return --

20 A Yes.

21 Q -- which is in the Lehman documents tab for this loan,
22 for loan 9621 at page 775 of 1351. You were taking us
23 through --

24 A Yeah.

25 Q -- the analysis.

1 A So if you look at page 776 you see the '06 return. And
2 if you look at 14 it's fairly clear that this is one time
3 income. And if you go deeper into the return you can see
4 it's from the sale of a business asset. So this \$95,000
5 which is the lion's share of the 108 that Mr. Grice would
6 ask us to consider was a one-time non-recurring type of
7 income that should fairly not be considered in trying to
8 ascertain what the year over year income as a real estate
9 broker is of this borrower.

10 And, in fact, after controlling for that fact you come
11 up with a number that's although lower than '05, again, more
12 consistent with the number we see in '05 and, again, about
13 one-tenth the amount of income that was reported or stated
14 in order to enable the borrower to secure the loan.

15 Q And then is there anything -- thank you for that.

16 Is there anything else in the file then that bears on
17 the analysis?

18 A Yes. Again, one thing to consider particularly with
19 real estate brokers in California is what's the time period
20 because things changed very quickly. And as the borrower
21 states in their hardship letter, which is an interesting
22 hardship letter to read, they --

23 Q Just -- I just want to -- are you looking -- there are
24 two in the file. Are you looking --

25 A I'm looking at the one --

1 Q -- at the one, page 758 at the bottom or 798 at the
2 bottom?

3 A I'm looking at 798.

4 Q Okay. So let's start there. Let's start with 798.

5 A Yeah. The more interesting one is the other one.

6 You're right. But they offer as an explanation for a
7 request for relief is that the real estate market tanked and
8 effected my income significantly and that they had to take
9 another job.

10 But, again --

11 Q The loan was taken out in '04?

12 A Five years prior, yes --

13 Q Okay.

14 A -- in '04.

15 Q And when did the market tank?

16 A In most people's consideration '07ish, '08. In fact,
17 '04 and '05 arguably could be years in which, and '06 are
18 years in which if you're going to make money as a real
19 estate broker you probably should have made money as a real
20 estate broker.

21 Q And then let's look --

22 MR. COSENZA: Objection.

23 THE COURT: Hold on, Mr. Shuster. Mr. Cosenza is
24 on his feet.

25 MR. COSENZA: Your Honor, this is just -- there's

1 no foundation for any of this. It's wild speculation as to
2 when the market tanked, when things happened.

3 THE COURT: Well, this is -- the borrower said that
4 the market tanked in the hardship letter --

5 MR. COSENZA: But the --

6 THE COURT: -- right?

7 MR. COSENZA: But then we have an answer from Mr. -
8 -

9 THE COURT: In response to --

10 MR. COSENZA: Yeah --

11 THE COURT: -- Mr. Shuster's question.

12 MR. COSENZA: -- because things change very quickly
13 as they state in the hardship letter. One more interesting
14 thing, they offered an explanation for request for relief is
15 that the real estate market tanked and effected my income
16 significantly.

17 THE COURT: Right.

18 MR. COSENZA: And then he says, most people's
19 consideration '07, '08, '04 '05 are years in which, '06 are
20 years in which -- I'm just reading this -- if you're going
21 to make money as a real estate broker you probably should
22 have made money as a real estate broker. I -- you know, the
23 foundation of --

24 THE COURT: Okay. Let's --

25 MR. COSENZA: -- when --

1 THE COURT: Let's dial it back.

2 MR. COSENZA: Sure.

3 THE COURT: Okay. In terms of Mr. Aronoff is not
4 being presented as an expert on the real estate industry.
5 So to the extent that you are making an observation as a
6 person in the world who reads the newspaper like everybody
7 else, that's fine.

8 MR. COSENZA: Sure.

9 THE COURT: But I'm not going to take it as an
10 expert opinion on when in a particular market --

11 MR. COSENZA: Sure. Okay.

12 THE COURT: -- the real estate market tanked as the
13 borrower here said.

14 MR. COSENZA: Thank you, Your Honor.

15 BY MR. SHUSTER:

16 Q So let's turn our attention to page 758.

17 THE COURT: Can -- just continuing along the line
18 of my trying to gather information, I hesitate, but it's
19 just interesting. I won't go there. I'll save it for
20 another day.

21 MR. SHUSTER: Okay.

22 THE COURT: Okay.

23 THE WITNESS: You've peaked my interest now.

24 (Laughter)

25 THE WITNESS: But --

1 MR. SHUSTER: I'll -- let me see --

2 THE COURT: I'll see --

3 THE WITNESS: -- it's your prerogative to do so.

4 THE COURT: It's --

5 MR. SHUSTER: -- let me try to re-peak it.

6 THE COURT: I try to not interrupt. It might seem
7 like I'm not doing a good job of that. I try not to
8 interrupt so I'm going to let Mr. Shuster continue and we'll
9 see if my question gets answered in due course.

10 BY MR. SHUSTER:

11 Q Mr. Aronoff, let me direct your attention if I may to
12 the hardship letter at page 758.

13 A I'm there.

14 Q And let me in the interest of speed point you to the
15 fifth paragraph.

16 A I see it.

17 Q What does the borrower say there?

18 A He says, "My '07 income was affected significantly by
19 the bank-owned homes coming on the market."

20 Q Okay. We can stop there. So the reference is to an
21 effect on '07 income, correct?

22 A Specifically in this first letter. Yes.

23 Q Okay. So let's go back to TRDX-153 and let's go to
24 page -- the first page which in this is page 5. I'm getting
25 now how these are numbered, but they're sequential and

1 they're probably based on this document. But in any event
2 it doesn't matter.

3 Let's go to page 5. Did the plan administrator contest
4 that the information that the trustees were relying on in
5 support of the breach was in the file and that it said what
6 it said?

7 A No.

8 Q And then let's just turn to Mr. Grice's rebuttal. Does
9 he say that?

10 (Pause)

11 A I think in fairness the second sentence of the last
12 paragraph attempts to do that. He says that the '05 tax
13 return does not include any information pertaining to how
14 much the borrower was earning, but that's all we have in
15 terms of a specific -- and, again, that could be read
16 generically, too, as to the inadequacy of the tax return.
17 So --

18 Q Does he refer to the hardship letters we just looked
19 at?

20 A He does not.

21 MR. SHUSTER: I'm inclined to leave it there. I
22 don't know if the witness is able to continue, but I'm not
23 sure I am.

24 THE COURT: Okay. I think --

25 (Laughter)

1 THE COURT: I think it's been a long enough day.

2 So why don't we leave it there.

3 Mr. Aronoff, thank you very much. Have a good
4 evening.

5 Let's talk about tomorrow. So tomorrow --

6 MR. SHUSTER: You're -- he's under a continued
7 instruction, just --

8 THE COURT: Yes, you are under a --

9 MR. SHUSTER: -- just so he's clear.

10 THE WITNESS: I understand.

11 THE COURT: You're under a continued instruction.

12 So we're starting at 10:00 tomorrow. I have a
13 small crowd coming in at 9:30 for something else.

14 Hold on one second.

15 (Pause)

16 THE COURT: Okay. I think you can leave everything
17 out. I'll just do it in the conference room. And then what
18 does tomorrow look like in terms of how much more there is
19 to Mr. Aronoff's direct examination?

20 MR. SHUSTER: I -- my goal is to finish by noon. I
21 would very much like to do that for obvious reasons --

22 THE COURT: Yes.

23 MR. SHUSTER: -- for time constraint reasons. So
24 I'm not promising --

25 THE COURT: Okay.

1 MR. SHUSTER: -- but --

2 THE COURT: Best efforts.

3 MR. SHUSTER: And we're going to --

4 THE COURT: Okay.

5 MR. SHUSTER: -- you know, I'm know we're going to
6 get to the exhibits to his report. We've already had a
7 forecast that there's going to be some challenges. That may
8 slow things down.

9 THE COURT: Okay.

10 MR. SHUSTER: But I'm going to try to get through
11 the loans --

12 THE COURT: Okay.

13 MR. SHUSTER: -- quickly.

14 THE COURT: Okay. Mr. Cosenza.

15 MR. COSENZA: Can I raise one issue on --

16 THE COURT: Yeah.

17 MR. COSENZA: -- on that, on the exhibits?

18 THE COURT: Sure.

19 MR. COSENZA: We still --

20 THE COURT: Maybe we should --

21 MR. COSENZA: Yeah.

22 THE COURT: Mr. Aronoff, why don't we let you go
23 home for the evening?

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 (Pause)

2 THE COURT: Goodnight. Thank you.

3 THE WITNESS: Thank you.

4 MR. COSENZA: Okay. Your Honor, so Monday
5 afternoon we raised this issue --

6 THE COURT: We're talking -- these are the buckets
7 that we're talking about?

8 MR. COSENZA: The exhibits that have like the
9 summaries that roll up.

10 THE COURT: The --

11 MR. COSENZA: Where you --

12 THE COURT: The demonstrative --

13 MR. COSENZA: Yeah.

14 THE COURT: Yeah.

15 MR. COSENZA: Where we requested sort of a tie in
16 to --

17 THE COURT: Yes.

18 MR. COSENZA: -- the documents.

19 THE COURT: Right.

20 MR. COSENZA: They said it would be an easy tie in
21 to the numbers. We requested them Monday night. We still
22 have not received how they're doing this. It's -- you know,
23 they're still not in these -- in the slides for Mr. Aronoff.

24 THE COURT: Okay. So --

25 MR. COSENZA: I mean, I'm just sort of in a

1 position, I'm not sure -- I don't think it's easy to do. I
2 don't even know how to respond because I don't think it's in
3 the data we've been provided as I pointed out on Monday.
4 And we're sort of in this position.

5 THE COURT: All right. So --

6 MR. COSENZA: We're just going to be handed
7 something --

8 THE COURT: So --

9 MR. COSENZA: -- and we don't know how to --

10 THE COURT: Forgive me, but my --

11 MR. COSENZA: -- deal with it.

12 THE COURT: -- my memory is a little foggy on this.

13 MR. COSENZA: Yes.

14 THE COURT: I remember that Mr. Goldberg provided
15 an explanation on this, right?

16 MR. COSENZA: Yeah. I don't think -- I don't think
17 that explanation is -- if that was the explanation I don't
18 think that works. I think that's why there's been a lack of
19 response and less --

20 THE COURT: Well --

21 MR. COSENZA: -- of production.

22 THE COURT: -- why don't we collect who we need for
23 this discussion and go into the conference room, okay, and
24 then everyone else can call it a night. Okay.

25 Thank you.

1 (Whereupon, these proceedings concluded at 5:01 p.m.)

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I N D E X		
T E S T I M O N Y		
DEBTOR'S		
WITNESS	EXAM BY	PAGE
JAMES H. ARONOFF	MR. SHUSTER	6

C E R T I F I C A T I O N

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